1953 **File No.** S Bij. 2/53

K

Legal **DEPARTMENT**

Examined **E BRANCH**

Subject:— Suits – Bijapur

C.S. No. 9 of 1951

Nilappa Sangappa Ligayat - - Plff

V/s

The State of Bombay - - - Deft

Re For permanent injunction restraining the defendant from disturbing the ~~plff~~ plaintiff's possession of the suit property

73(E)

File No. S. Bij. 2/53

Std. Scott. Slip 24-B

2/53

Received on 3-1-1951.

Registered on 11-1-1951.

Decided on 1-4-1953.

Duration

IN THE COURT OF THE CIWIL JUDGE(SENIOR DIWISION)
AT BIJAPUR.

Ciwil Suit No. 9 of 1951.

Pleaders.

Shri J.R.Desai

1. Nilappa Sangappa Shirur, Lingayat, age 45, occupation agriculture, residing at Badami Taluka Badami, Dist. Bijapur. Plff.

Vs.

Shri A.C.Angadi, (Govt.Pleader).

1. The Bombay State.

Claim Rs. 5/-.

X X X X

ARY TO GOVERNMENT
AL DEPARTMENT
8305 15
6/4/53

Order.

Plaintiff's suit is dismissed. The Plaintiff do pay the costs of the defendant and bear his own.

LEGAL DEPARTMENT
4 APR 1953

1st April 1953. Sd. M,H.Kazi.

No. 514 of 1953.
Date 1-4-1953.

Copy respectfully forwarded to the Remembrancer of Legal Affairs, Bombay No.1 for information.

Ahmad

Dist.Govt.Pleader,Bijapur.

Suits:

Bijapur.

For permanent injunction, restraining the defendant from disturbing the plaintiff's possession of the suit property. /A

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 2919.

Bombay Castle, 22nd February 1952.

Letter from the Collector of Bijapur, No. L.A.W./204, dated the 22nd April 1951—Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

B1 IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.
Civil Suit No. 9 of 1951.

Nilappa Sangappa Shirur Lingayat ... ... Plaintiff;
versus
The State of Bombay Defendant. /B

Memorandum to the District Government Pleader, Nasik, No. 1432, dated the 29th January 1952—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

P. M. LAD,
for Secretary to Government.

Issued Cir 8.6.53

G. R. No. 2919, L. D., dated the 22nd February 1952.

To

*The Revenue Department,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1952.

Copy forwarded for information and guidance to

Submitted after issue
2 file in S. Bij/53 (new)
9/6
Complied. NB 9.6

S — 45

BIJAPUR CIVIL SUIT No. 9 OF 1951.

Chronological Statement of Facts.

1. This is a suit against the State of Bombay for permanent injunction, restraining the defendant from disturbing the plaintiff's possession of the suit property.

2. One Shri Mallappa Girimallappa Jolad of Badami applied on 30th January 1947 for temporary lease for five years of the site in question. After enquiry the Mamlatdar in his No. Nil, dated 22nd February 1947, leased out the Gaothana i.e. (the site in question measuring 21′ × 21′) to the applicant Mallappa Jolad for the period ending 31st July 1947 (page 13, file No. II) on condition that if the site in question would be required by Government for a public purpose, the lessee should vacate after 7 day's notice. The Mamlatdar extended the period of lease for one year, i.e. up to 31st July 1948. As per request of the applicant the Mamlatdar again extended the lease period by one year ending on 31st July 1949 under his No. Nil, dated 2nd July 1948. An additional site 9′ × 9′ was also granted this time (page 16, file II).

3. The applicant, Nilappa Sangappa Shirur (the plaintiff) applied for the site measuring 30′ × 30′ on annual ground rent for a period of five years. This site was temporarily leased out from 22nd February 1947 on annual lease for non-agricultural use to Shri Mallappa Girimallappa Jolad. Shri Mallappa Jolad, the brother-in-law of the applicant, used to reside in the same house. The Mamlatdar under his No. LB., 634, dated 30th April 1949, recommended that the site should be granted to the plaintiff Nilappa on annual rent of annas 8 for a period of five years (page 19, file I). The Prant Officer in his No. LB. 1145 of 4th May 1949 made a reference back. The Mamlatdar reported that no suitable plots could be laid out and that the grant of the site to the applicant will not cause any inconvenience to the public and to the general traffic; that some plots near about the site were granted on O. P. and rent; that the Sarpanch, V. P. C. Vs. have no objection to the grant of the site to the applicant and that the applicant had already stated that he would relinquish the site if it is required by Government for the use of the public. The Mamlatdar further reported that if the site were to be sold by public auction the poor people like the applicant will have no chance of getting the site for residential purpose and they will have to remain houseless as well-to-do and rich people will offer higher bids and outbid the poor people. The Mamlatdar recommended the grant of the site to the applicant on payment of O. P. of Rs. 25 and the ground rent of annas 8. The Prant Officer thought the

purports only to revise the order on which the *kabulayat* or *sanad* is based. The exercise of such powers is perfectly legal. As a result of the cancellation of the order, the *sanad* or the *kabulayat*, becomes void. The latter cannot survive when the former is set aside. So the Government's order in this case is perfectly legal. The plaintiff cannot challenge it by a suit.

6. The narrow construction which seems to have been put upon section 211, Land Revenue Code, in some of the rulings referred to above, does not appear to be in consonance with the wording and spirit of section 211 and the ruling in 36 Bom. L.R. Section 211 is the only section in the Land Revenue Code, which invests Government with Revisional powers over the actions and the orders of their subordinate officers. If agreements are entered into as a part of the routine work the Government cannot be expected to be nor can they be said to be even constructively, aware of these actions of their subordinate officers and the Government's powers of revision cannot be taken away. It will lead to an anomalous position. Government is trying to get a decision, on this point, if necessary from the Highest Tribunal.

7. The plaintiff says in paragraph 4 of the plaint that he has built a *pucca* building worth Rs. 8,000 and the demolition of this structure would mean serious loss to him. He has unnecessarily exaggerated the cost of the building. The *panchas* have estimated the value of the building at Rs. 3,000. The order passed by the Government cancelling the Prant Officer's Order No. L. B. P. 1145, dated 30th July 1949, is not only legal but is also just and equitable as the site in question is needed for public use and Rs. 3,050 are to be paid to the plaintiff. He is, therefore, amply compensated for the loss he is likely to suffer by the demolition of the building.

8. It is contended by the plaintiff that the Government passed the order in revision in this case without notice to him. In revision matters, it is not legally obligatory on Government to issue notice to the parties or hear them. No particular procedure is laid down in the Land Revenue Code which must be followed before the order in revision is passed. This contention is, therefore, without substance.

9. Besides, the plaintiff in his application dated 3rd November 1948 has clearly stated that he was willing to vacate the site when it was required by the Government. The plaintiff cannot, now turn round and say that Government's order in revision is illegal. The plaintiff is estopped from challenging the order of the Government. The site in question is required for motor-stand and so Government was justified in revising the Prant Officer's order dated 30th July 1949.

10. It should therefore be contended that the order passed by the Government cancelling the Prant Officer's order No. 1145, dated 30th July 1949, is legal and valid and also just and equitable. The plaintiff cannot question the order of the Government by a Civil Suit.

11. Plaintiff has filed a suit for permanent injunction on the assumption that Government's order under section 211 is *ultra vires*. Plaintiff had not prayed for any declaration in this case. Unless and untill the order in question is declared *ultra vires*, the plaintiff is not entitled to any injunction. The suit in the present form is therefore not maintainable.

12. For these reasons it should be contended that plaintiff is not entitled to the permanent injunction sought by him in this case. The suit fails and should be dismissed.

In the court of the civil judge, senior division,

Bijapur.

C.S. 9 of 51

1. Nilappa Sangappa Shirur,
Lingayat, age 45. occupation
agriculture, residing at Badami
Taluka Badami.

1. The Bombay State.

Herein the Plaintiff begs to submit as under:-

1. The plaintiff is the owner of a house in the village of Badami in Badami Taluka of the Bijapur District, measuring 30 x 20' surrounded as under;-

To the North:- The Govt; opensite taken by Irappa Athani for temporary use.

To the south;- House of Yamanappa Pawar.
To the East;- Trench of Ditch.
To the West;- Govt; Site and beyond that station road.

2. The open site on which the building has now been constructed as described in para 1 above belonged to Govt(defendant). The mamlatdar of Badami leased out that site to one Mallappa Giramallappa jolad of Badami for one year by his order dated 28.2.1947. The lessee Mallappa is the nearst relative of the plaintiff and is jointly residing with him

The plaintiff and said Mallappa began to use the site as lessees as per order of the Mamlatdar.

3. The site referred to in para 1 above was granted to the plaintiff by the defendant under section 67 of the Land Revenue Code read with rule 43 of the Land Revene Rules. The terms and conditions as agreed to between plff and the deft's officers were mentioned in Form H as required by rule 43 of the Land Revenue Rules. The agreement was entered into by the Prantofficer or District Deputy Collector as the agent of the defendant and in that capacity. By virtue of the agreement entered into and embodied in Form H according to rule 43 of the Land Revenue Rules the site granted to the plaintiff and the plaintiff became the absolute owner of the plot mentioned in para 2 above. That agreement form is dated 6-8-1949.

4. Since the plaintiff beacame the owner of the site and in pursuance of the agreement embodied in form H the plaintiff constuted a Pacca building at the cost of Rs.8000/-.He is regularly paying the assessment as required by the agreement and has also paid Rs.50/-as panch valuating of the site as required by the agreement. In this way the plaintiff has acted and is acting strictly in terms of the agreement entered into between him and the defendant.

5. The plaintiff is in peaceful possession and enjoyment of the site together with the building thereon since he has become owner of the same .The defendant has recently passed an order purporting to act under section 2-11 of the Land Revenue Code whereby the order of the Prant officer is cancelled and a direction has been given to auction the site together with the building thereon with an up-set price of Rs.5050/-and that the plaintiff should be paid Rs.3050/-out of the price realised at the auction. Such an order of defendant is without jurisdiction and ultra vires .Section 211 of the Land Revenue Code has no application to documents embodying terms and conditions agreed to between Govt and the plaintiff.

6. The Prant officer or the District Deputy Collector acting as agent of the defendant by his declaration and act intentionally caused and permitted to the plaintiff to believe that he is the owner of the site mentioned in para 2 above and to act upon such belief. The plaintiff honestly entered into an agreement with the defendant and passed a deed of agreement in Form H.Further he constructed a pacca building at a considerable cost. It is now not open to defendant to challenge the ownership or title of the plaintiff to the suit property since the defendant is estopped from doing so

7. The defendant passed an order mentioned in paras 5 without notice to the plaintiff and thereby resiled from the agreement entered into by its officers on its behalf. Such an order is illegal and unenforceable.

By virtue of the illegal order passed by the defts. as mentioned in paras 5 above defendant's Officers are threatening to distrub the plaintiff from his peaceful possession and enjoyment of the suit property. Hence, this suit by plaintiff for a permanent injunction to restrain the defendant not to interfere with the possession and enjoyment of the suit property by the plaintiff except for any breach of the terms of the agreement entered into by the parties. The necessary notice as required by section 80 of the C.P.C. is given.

9. The plaintiff resides within the jurisdiction of this court and the cause of action has also arisen in the jurisdiction of this Court. Hence this Court has jurisdiction to try this suit.

10. The cause of action of this suit arose in the month of October 1950 when the Officers of the defendant threatened to interfore with the peaceful possession and enjoyment of the suit property by the plaintiff.

11. As this is a suit for permaent injunction the claim is valued at Rs.5/-. The valuation is the same for the purpose of jurisdiction and pleader's fees.

12. The plaintiff hereby prays:-

(A). That a permanent injunctionbe issued to the deft not to interfere with the possession and enjoyment of the suit property by the plaintiff except for any breach of the terms of the agreement entered into by the parties.

(B) That the plaintiff be awarded his costs of the suit from the defendant.

(C) That such other relief as the court deems fit may be awarded.

(D). That the plaintiff be allowed liberty to amend the plaint if need be. A decree in terms of the above prayer may be passed.

15 5

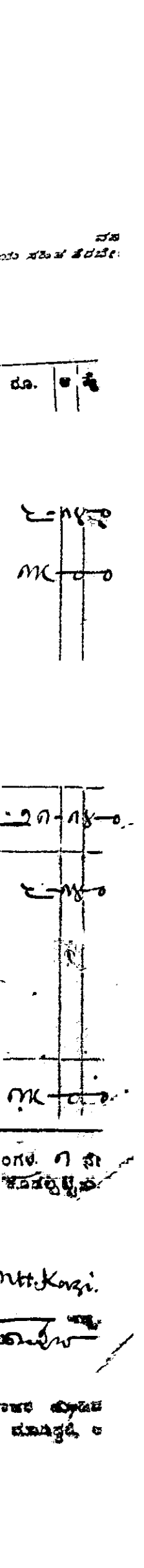
[illegible] ಶ್ರೀ ಎಚ್.ಎಸ್. ಎಚ್. ಕಾಜಿ. [illegible] ಸೀಂಧ್ರ — [illegible]

[illegible] ಶ್ರೀ ಜಿ.ಕೆ. ಹೊಳ್ಳ. ದೇವಾಂಬಿ — [illegible]

ಶ್ರೀ ಎ.ಸಿ. [illegible] [illegible]

ಎಷ್ಟಾಯ ಯಾವಾ ರದ್ದು ಪಡಿಸಿದೆ. ಎಂದಾಯ

ಪ್ರತಿವಾದಿಯ ಪರವಕೀಲರು ತಮ್ಮಲ್ಲಿ ಎಷ್ಟು ನಿಷೇಧ ಬೇಕು —



ಮತ್ತು ಈ ದಾವೆಯ ವೆಚ್ಚದ ಬಗ್ಗೆ ರೂಪಾಯಿಗಳ ರಕಮ್ಮನ್ನು
ಇವನು ಇವನಿಗೆ ವಸೂ

ಲೀ ರೂತೆ ಈ ಕಾರ್ಯಾಲಯದಿಂದ ಹಣವನ್ನು ಕೊಡುವ ಕಾರ್ಯಾಲಯ ವರೆಗೆ ಆಗುವ ಅದರ ಮೇಲಿನ ಬಡ್ಡಿಯು ಸಹಿತ ತೆರಬೇಕು

ವೆಚ್ಚದ ಯಾದಿಯು

ಪಾದಿಗೆ ಆದ ವೆಚ್ಚ.	ರೂ.	ಆ.	ಪೈ	ಪ್ರತಿವಾದಿಗೆ ಆದ ವೆಚ್ಚ.	ರೂ.	ಆ.	ಪೈ
೧. ಅಸಲರ್ಜಿಗೆ ಸ್ಟಾಂಪು	—	೮	—	೧. ವಜಾಬ್ಜಾಕೆಯ ಅಥವಾ ವಿರುದ್ಧ ದಾವೆಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು.			
೨. ಮುಖತ್ಯಾರನಾಮೆಗೆ ಸದರ	—	೧	೦	೨. ಮುಖತ್ಯಾರನಾಮೆಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದ(ನಿಶಾನಿ) ಗಳಿಗೆ ಸದರ....	೧	೧೪	೦	೩. ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳಿಗೆ ಸದರ ಒಟ್ಟು ಮುಂದಿನ ಪಾನಿನ ಮೇಲೆ ಕೊಟ್ಟದ್ದು.			
೪. ಸಾಕ್ಷೀದಾರರ ಹೊಟ್ಟೇವೆಚ್ಚ				೪. ಸಾಕ್ಷೀದಾರರ ಹೊಟ್ಟೇವೆಚ್ಚ			
೫. ದಾವೆಯ ರಕಮಿನ ಮೇಲೆ ಪ್ಲೀಡರನ ಫೀ....	೧೫	೦	೦	೫. ಪ್ಲೀಡರನ ಫೀ	೧೫	೦	೦
ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ ಪ್ಲೀಡರನ ಫೀ....				ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ ಪ್ಲೀಡರನ ಫೀ....			
೬. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	೧	೮	೦	೬. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ			
೭. ಕಮಿಶನರನ ಫೀ				೭. ಕಮಿಶನರನ ಫೀ			
೮. ಭಾಷಾಂತರದ ಫೀ				೮. ಭಾಷಾಂತರದ ಫೀ			
೯. ನಕಲು ಮಾಡುವ ಬಗ್ಗೆ ಫೀ				೯. ನಕಲು ಮಾಡುವ ಬಗ್ಗೆ ಫೀ			
೧೦. ತಪಕೂಬಿಗಳ ಬಗ್ಗೆ ಕೊಟ್ಟದ್ದು				೧೦. ತಪಕೂಬಿಗಳ ಬಗ್ಗೆ ಕೊಟ್ಟದ್ದು			
೧೧. ವಾರಸದಾರರನ್ನು ಬದಲಾಯಿಸುವ ಬಗ್ಗೆ ಮಾಡತಕ್ಕ ಅರ್ಜಿಯ ಮೇಲೆ ಸ್ಟಾಂಪು.							
ಒಟ್ಟು	೧೦	೮	೦	ಒಟ್ಟು	೧೭	೮	೦
ಸಾಮಂಜೂರಾದ ಖರ್ಚು				ಸಾಮಂಜೂರಾದ ಖರ್ಚು			
ಅಸಲರ್ಜಿಯ ಮೇಲೆ	೧	೧೪	೦	ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ			
ಪ್ಲೀಡರನ ಫೀಯ ಮೇಲೆ				ಪ್ಲೀಡರನ ಫೀಯ ಮೇಲೆ			
ಪ್ರೊಸೆಸ್ಸುಗಳ ಮೇಲೆ				ಪ್ರೊಸೆಸ್ಸುಗಳ ಮೇಲೆ			
ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ಮೇಲೆ (ಮುಂದೆ ನೋಡಿರಿ.)				ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ಮೇಲೆ (ಮುಂದೆ ನೋಡಿರಿ).			
ಬಾಕಿ	೧೪	೧೦	೦	ಬಾಕಿ	೧೭		

ಈ ಹೊತ್ತು ಸನ್ ೧೯೩೨ನೇ ಇಸವಿಯ ೪ ತಿಂಗಳ ೧ ನೇ
ಕಾರ್ಯಾಲಯದಲ್ಲಿ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟನ ಮೋಹರು ಮಾಡಿ ಕೊಡಲಾಯಿತು.

Sd/- S. A. Mulla
ಪಾದಕೂನ.

Sd/- S. R. Desai
ಜಾನಿಯ ಪ್ಲೀಡರ

Sd/- M. K. Kagi
ನಿಶಿಲ್ ಸಬಾಪೈ

ಪೊಳದಮಯಲ್ಲಿಯ ಪ್ರಾಸಿಕ್ಯೂಟರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲಾ ಅವರು ಕಳೆದ ಮಾಹಾ ಮೊಹಿಮ ಪೂರ್ಣವಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು, ಅವೀಲು ಮುಗಿದಿದ್ದಕ್ಕೆ, ಅವೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ ನಾಶಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶಮಾಡುವದರಲ್ಲಿ ಬರುವವು).

ಮಾಡಿದ ಕೆಲಸಕ್ಕೆ

ರೂ. ಪೈ

ಮಂಜೂರಾದ ಖರ್ಚು

ದಾಖಲಾದ ಕಾಗದ(ನಿಕಾಸಿ) ಗಳ
ಸಂಖ್ಯೆ —

ಪ್ರಕಟವಾದ ಪುಸ್ತಕದ ಬೆಲೆ

ರೂ. ಪೈ

ಮಂಜೂರಾದ ಖರ್ಚು ...

ದಾಖಲಾದ ಕಾಗದ (ನಿಕಾಸಿ) ಗಳ
ಸಂಖ್ಯೆ —

ನಾಮಂಜೂರಾದ ಖರ್ಚು ...

ದಾಖಲಾದ ಕಾಗದ(ನಿಕಾಸಿ) ಗಳ
ಸಂಖ್ಯೆ —

ನಾಮಂಜೂರಾದ ಖರ್ಚ

ದಾಖಲಾದ ಕಾಗದ(ನಿಕಾಸಿ)
ಸಂಖ್ಯೆ —

19

Received on 3-1-1951.

Registered on 11-1-1951.

Decided on 1-4-1952.

Duration

In the Court of the Civil Judge, Senior division,
At Bijapur.

Civil Suit No. 9 of 1951.

Pleaders

Shri J.R.Desai.

1. Nilappa Sangappa Shirur, Lingayat, age 45, occupation agriculture, residing at Badami Taluka Badami Dist.Bijapur. — Plaintiff.

Vs.

Shri A.C.Angadi (Govt.Pleader)-

1. The Bombay State. — Defendant.

Claim Rs 5/-.

The Plaintiff sues to obtain an injunction against the defendant restraining it from interfering with his possession and enjoyment of the suit property by the plaintiff. He sues for costs of the suit.

2. The plaintiff alleges that the suit site(on which the building has now been constructed) belonged to Government and that it was leased out to his relative Mallappa by the Mamlatdar of Badami for a year on 28-2-1947 and that the said Mallappa and himself were enjoying it as per that order. He says that later, the said site was granted to him by the defendant under section 67 of the Land Revenue Code read with rule 43 of the Land Revenue Rules for constructing a building over it. He says that he executed on agreement deed to the defendant in Form H as per order of the Prant Officer(District Deputy Collector), the agent of the defendant. He says that he became the owner of the said plot after execuing the said agreement deed on 6-8-1949. He further says that he constructed a Pakka building by incurring the cost of Rs.8000/-, over the said plot and began to make use of it. But the defendant passed an order under section 211 of the Land Revenue Code cancelling the order of the Prant Officer and ordering its officers to sell the site of the building in

auction and pay Rs.3050/- to the plaintiff.He says that the said order of the defendant was without jurisdictin and ultra vires.He then says that the Prant Officer acted as agent of the defendant, and caused and permitted the plaintiff to believe that he was the owner of the suit site and to construct the building over it.As the plaintiff honestly believed the defendant's agent and entered into an agreement in Form H, it is not open to the defendant to challenge the plaintiff's title over it and the action of the defendant is barred under the principle of estoppel.He lastly says that the defendant passed the recent order without giving notice to the plaintiff.and that such an order was illegal and unenforceable.Hence the suit after serving the notice under section 80 of theCivil Procedure Code.

3. The defendant in its Written statement, Exh. 17, contended, inter alia, that the plaintiff was not at all the owner of the suit house.It stated that it cancelled the order passed by the prant Officer under section 211 of the Land Reveneu Code and that the said order was, therefore, legal, valid and final.It stated that the agreement, entered into between the plaintiff and the Mamlatdar was not one done under the instructions of the defendant, and that the said agreement became void as soon as the order of the Prant Officer was cancelled. It denies the allegation of the plaintiff that he incurred an expense of Rs.8000/- over the building on the suit site, but stated that the total cost for the building did not exceed Rs. 3000/-.It then stated that it was not obligatory on it to issue the notice to the plaintiff, and that the order for payment of Rs. 3050/- to the plaintiff was legal.It also stated that until the order of the Government was declared ultravires, the plaintiff had no right to pray for an injunction.It lastly contended that the suit was not maintainable in the present form and that no injunction could be granted against the defen ant.It prayed for its costs.

91

The following issues are framed at Exh.19:-

(1) Whether the Government's order dated 31-8-1950 cancelling the Prant Officer's order under section 211 of the Bombay Land Revenue Code is ultra vires and void ?

(2) Whether the Mamlatdar acted as Government 's agent and on its behalf and under its instructions in accepting the Kabulayat dated 6-8-1949 in Form H from the Plaintiff ? Is the said Kabulayat binding on Government ?

(3) What amount did the plaintiff spend to build the suit house ?

(4) Whether the plaintiff is the owner of the suit site and house ? What legal right and interest has he in the same ?

(5) Whether on account of the Mamlatdar's acceptance of the Kabulayat dated 6-8-1949 from the plaintiff, the defendant is estopped from disputing the plaintiff's title to the suit site and house ?

(6) Whether the Government 's order dated 31-8-1950 cannot be questioned in a civil Suit ?

(7) Whether it was necessary for the plaintiff to pray for a declaration that the Government's order dated 31-8-1950 is ultra vires and void ? Is the suit bad for omission to pray for the said declaration ?

(8) Should the injunction sought be granted ?

(9) What decree ?

5. My findings are :-

1. No.

2 1st part, Yes; 2nd part, under the orders of D.D.C but D.D.C's order was legally by deft.

3. Res

4. He is the owner of the structure, constructed on deft's site.

5. No.

6. Can be questioned.But the plff has not framed the suit properly.

7. Yes. Yes.

8. No.

9. As per final order.

REASONS.

6. Issues Nos 3 and 4:-, On the date of hearing, the learned pleader for the plaintiff passed a Pursis Exh.30 stating that he would lead no oral evidence.He also stated

in it that the issue No.3 should be reserved without giving any finding on it.The learned Government Pleader stated that he had no objection if the finding on the issue No.3 were reserved for the separate litigation.I, therefore, reserve my finding on the issue No.3.

7. The plaintiff alleged in his plaint that he was the owner of the suit house and the site below it.But at the time of hearing, his learned pleader looked to his own agreement deed, Exh.23, and admitted that it was only a lease-deed executed by the plaintiff in favour of the defendant.It is true that the defendant grantedthe suit site to the plaintiff as a leasee, but it was of a permanent nature practically.The learned pleader for the defendant stated that the plaintiff could not challenge the defendant's rights over the site and that he (plaintiff) should be content with the rights, conferred on the plaintiff by the said lease.So the issue No.4 does not survive at all.However, I may state that the plaintiff is the permanent leasee of the suit site under certain conditions laid down in the agreement or lease-deed Exh.23, if the said agreement or lease deed were to be regarded as an existing document after the final order of the defendant which was passed on 31-8-1950

8. Issues Nos 1,2 and 5 to 8:- The facts of the case are not in dispute. The plaintiff applied to the District Deputy Collector or Mamlatdar to grant the suit site belonging to the defendant to him, and the District Deputy Collector granted the prayer of the plaintiff on payment of Rs.50/- and odd.Accordingly,, as per order of the D.D.C or Prant Officer, the lease deed, Exh. 23, was executed by the plaintiff on 6-8-1949 in favour of the Mamlatdar.As per terms of the said lease-deed, the plaintiff was to construct a Pakka building within two years from the date of the agreement and he raised such a building

23

over the suit site within a vear or so. The plaintiff alleged that he spent about Rs.8000/-. over the said building in his plaint. But the said question, as stated above already, was reserved for consideration for the future litigation. The plaintiff is still enjoying the suit house and the site below it from the date of the agreement deed. In the meanwhile, some how or other, the fact of granting the suit site to the plaintiff was brought to the notice of the defendant. The defendant accordingly held inquiry about the said grant under section 211 of the Land Revenue Code and cancelled the order, passed by the Prant Officer on 27-5-1950. The defendant also directed in the said order that the suit building and the site below it should be sold in acution, and that the amount of Rs.3050/- should be paid to the plaintiff by way of compensation as he had erected a building over the suit site before the passing of the said order, Exh.34. The said order was passed by the defendant admittedly without giving zny notice to the plaintiff.

9. When the plaintiff came to know of this order of the defendant, he came to the Court for obtaining an injunction against the defendant, thinking that the Revenu authorities would take action in respect of ths suit property in pursuance of the order of the defendant and that he would be evicted from the property. But the proper course for him was to approach the Government and request it to reconsider its decision by taking into consideration the construction of the building over it before passing of the drder, or for some other reasons. After getting some decision of the Government over his application, he would have then rushed to the Court for getting his grievances, if any, reddressed. In the present suit also he has not prayed for any declaration. In the suits for mere injunct-ions, the Court will have to consider if the plaintiffs have got the possessory title to the properties or not, and if they have also got the possession of the properties

on the dzte of the suit.The plaintiff in this case undohbtedly has got the possession of the suit property.But the question for consideration is, if the plaintiff hasgot the possessory title to the prpperty.The plaintiff first applied for the grant of the suit site to him to the Mamlatdar or D.D.C. and he got the order in his favour.The lease-deed , Exh.23, came into existence in pursuance of the order under section 211 of the Land Revenue Code. When the order of the D.D.C. was cancelled by his superior authoirty(the defendant), the plaintiff's position would be that he got no right over the suit property and that the agreement deed which came into existence in pursuance of the D.D.C's order also became a scrap of paper.

10. Hoever, the learned pleader for the plaintiff argued that the Mamlatdar who took the agreement deed Exh. 23 was an agent of the defendant and that the said agreementwas, therefore, binding on the defendant.He further argued that the defendant had no jurisdiction to cancel the agreement deed, Exh. 23, without giving anynotice to the plaintiff, and that the said order of the defendant was illegal and ultra vires.In support of his argument he relied on three rulings of our High Court, viz,. The Government of Bombay V. Mathuradas (44 Bom.L.R. 406), The Province of Bombay V.Hormusji (50 Bom.L.R. 424) and the Government of the Province of Bombay V. The Shmedabad Sarangpur Mills Co.Ltd.(46 Bom.L.R.413) In all those rulings it is stated that under section 211 of the Bombay Land Revenue Code, the Commissioner (now the Government) can in revision call for the papers in order to satisfy hitself as to the legality orpropriety of any decision or order passed by, and as to the regularity of the proceedings of, a subordinate revenue officer.It is true that in 45 BomLR.414 it was further stated that the Commissioner could not cancel the agreement, made by the Collector acting as the

agent of the Secretary of State.In the other two rulings also the same principles are enunciated.I shall have, therefore, to see if the Government interferred with the agreement entered into between the Mamlatdar and the plaintiff.The agreement deed, Exh. 23, came into existence in pursuance of the D.D.C.'s order in the ordinary routine course to gave effect to the said order.Under section 211, the Government had the right, as stated above, to cancel the D.D.C's order.Acts done in pursuance of the D.D.C's order came to an end authomatically as soon as the D.D.C's order was cancelled.There was no independent agreement enteredinto between the Mamlatdar and the plaintiff and the Govt. did not in erefere with such an agreement.The agfeement, Exh.23 is a mere act done in pursuance of the D.D.C's order and it cannot be treated as the agreement referred ti in the above mentioned rulings.There was no necessity for the defendant to set aside the said agreement or to inv estigate the actions taken by the subordinate officers in pursuance of the D.D.C's order.I am, therefore, of opinion that the said rulings are not applicable to the present case.The learned Government Pleader referred to the case reported in the Secretary of State for India V.Anant Krishnaji(36 Bom. L.R. 242) in support of his argument, and I think that the principles, laid down in it are applicable to the facts of the preeent case.

11. The learned pleader for the plaintiff next argued that the order, passed by the defendant was nullity and ultra vires as there was no notice to the plaintiff before passing any order.He rlied, in support of his argument, on 49 Bom.L.R. 414(Mohandas Mulji Vs.The Collector of Bombay) and 52 Bom.L.R. 421(Tuljansa Vs.The Commissioner of Income-Tax,Bombay).But the learned pleader for the plaintiff should note that tjere was mp dos/ite netweem tje /;aomtoffand some other party and that the defendant was not asked to give its finding on any such di spute.The plaintiff merely requested the Mamlatdar or the District

Deputy Collector to grant the suit property to the former by way of a permanent lease and the District Deputy Collector complied with the plaintiff's request. But the defendant, as a revisional final authority considered the District Deputy Collector's action as improper and illegal and cancelled his order passed in favour of the plaintiff.There was, therefore, no dispute between two parties and therefore, there was no necessity for the defendant to serve any notice to the plaintiff before cancelling the order of the District Deputy Collector.There was no act done by the defendant which infringed the principles of equity and natural justice.I am, therefore, unable to agree with the learned pleader for the plaintiff in this respect and of opinion that the above mentioned ruling also are not directly applicable to the facts of the present case.

12. The learned pleader for the plaintiff next argued that the plaintiff was estopped from interfering with the order of the District Deputy Collector, who had been invested with the powers to grant any Government site to any party.He stated that the plaintiff constructed the building over the suit site believing bona fide that the District Deputy Collector had the full power to grant any Government site to any person. But the defendant also had the power to revise or cancel the order, passed by the District Deputy Collector under section 211 of the Land Revenue Code.When the defendant cancelled the order of the District Deputy Collector legally, according to law, there is no question of estoppel in the case.The plaintiff might have constructed the building, bu the proper course for him was to approach the defendant for taking into consideration the fact that the building had been constructed over the suit site and to get relief from it.I am not much concerned about the actions which the plaintiff has taken or would be taking in the matter.

27

It is certain that the order passed by the defendant under section 211 is not affected by the principles of estoppel..

13. The defendant had full powers under section 211 of the land Revenue Code to revise the order, passed by the District Deputy Collector and it has accordingly done so. This order is undroubtedly intra vires.The said order, no doubt affects the rights of the plaintiff, but he failed to take the proper steps to get the suitable relief.It was the duty of the plaintiff to get the said order of the defs which is intra vires, first set aside for the reasons and circumstances which are in his favour and then pray for injunction.When the defendant's order is not ultra vires, the suit for mere injunction is not at all tenable.In the order of the defendant there is some provision, made in respect of the building constructed by the plaintiff. But I am not much concerned to consder in this suit for injunction, whether the defendant had the power to sell the house by public action and utilise the part of the sale proceeds of it to itself. Moreover, the plaintiff himself has not claimed any declaration in respect of the latter part of the defendant's order in thissuit. The plaintiff's position would be, in the present case, that he is filing the suit against the owner of the property without having any title over it. As long as the order of the defendant stands, the suit for injunction is not at all maintainable against the defendant.

14. The learned Government Pleader argued that the suit was barred under section 4F of the Revenue Jurisdiction Act and Section 62 of the Land RevenueCode. But I am unable to agree with him as section 4F of the Revenue Jurisdiction Act would not apply to the present case in view of the fact that the defendant is not claiming anything against the Government.Moreover, the defendant did not take such a defence in its written statement.For these reasons, I record my findings on all the issues accordingly and passthe following order.

15. ORDER.

Plaintiff's suit is dismissed.The plaintiff do pay the costs of the defendant and bear ~~it~~ his own.

1st April 1953. Sd. M.H.Kazi.

Civil Judge,Sr.Dn.,Bijapur.

R.A. No. 122/1953.

In the Court of the District Judge,

at Bijapur.

1. Nilappa Sangappa Shirur
   Age 47, Occupation: Agriculture
   residing at Badami, District Bijapur. — Appellant. (Ori.Plaintiff).

Vs.

1. The Bombay State. — Respondent. (Ori.Defendant).

Claim Rs. 5/-.

Being aggrieved by the decree passed by the Civil Judge, Senior Division, on 1-4-1953 in Civil Suit No. 9/1951 the above named appellant begs to prefer this appeal against the same on the following among other grounds:-

(1) The decree of the Lower Court is contrary to law and equity.

(2) The Lower Court ought to have held that the plaintiff became the owner of the suit plot after he executed the agreement deed Exh. 23 on 6-8-1949.

(3) The observations of the Lower Court that plaintiff ought to have approached the Government before coming to the Court to get his grievances reddressed, are not correct.

(4) The Lower Court erred in holding that when the order of the District Deputy Collector, dated 27-5-1950 was cancelled by Defendant, the plaintiff got no right over the suit property and that the agreement deed which came into existence in pursuance of District Deputy Collector's order also became a crap of paper.

(5) The Lower Court ought to have held that the Mamlatdar who took the agreement deed Exh.23. was an agent of the Defendant and that the said agreement was binding on the defendant.

(6) The Lower Court erred in holding that the Government's order dated 31-8-1950 cancelling the Prant Officer's order under section 211 of the Bombay Land Revenue Code is not ultra vires and void.

(7) The Lower Court has failed to see that the order of the Government cancelling the order of the District Deputy Collector without giving any notice to the plaintiff, is quite derogatory to the rules of natural justice and is in gross violation of the same.

(8) The Lower Court has not properly applied the law enunciated in the rulings in 44 Bom.L.R. 406 and 46 Bom.L.R. 413, quoted by the Plaintiff.

(9) The Lower Court erred in holding that the Govennment did not interfere with the agreement entered into by the plaintiff and the Mamlatdar.

(10) The reasoning of the Lower Court is not proper

(11) The ruling in 36 Bom.L.R. 242, does not apply to the facts of the case at all.

(12) The Lower Court's observation that the Government had the right to cancel the District Deputy Collector's order under section 211 is wrong.

(13) The Lower Court ought to have held that the order passed by the Defendant was nullity and ultravires as there was no notice to the plaintiff before passing any order following the rulings in 49 Bom.L.R.414 and 52 Bom.L.R. 421.

(14) The reasoning of the Lower Court in distinguishing the said rulings is wrong.

(15) The Lower Court ought to have held that the defendant as estopped from disputing the plaintiffs title to the suit site and house in view of the Mamlatdar's acceptance of the Kabulayat dated 6-8-1949 from the plaintiff.

(16) The Lower Court erred in holding that the plaintiff has not properly framed this suit.

(16) The lower Court erred in holding that the suit for injunction is not maintainable.

(18) The Lower Court erred in holding that it was necessary for the plaintiff to pray for a declaration that the Government's order dated 31-8-1950 is ultravires and void

and that the suit is bad for the omission to pay for the said declaration.

19. In view of the ruling quoted in 55 Bom.L.R. 281, the decree of the Lower Court is obviously wrong.

(20) The Lower Court ought to have granted the injunction sought.

It is therefore, prayed that the decree of the Lower Court be set aside and plaintiff's suit be decreed as prayed for in the plaint with costs throughout.

Sd.

Bijapur. Pleader for appellant.

336

R.A.No. 122/1953.

In the Court of the District Judge,

at Bijapur.

1. Nilappa Sangappa Shirur,
   age 47, Occupation: Agriculture
   Resideing at Badami Dist.Bijapur Appellant.

Vs.

1. The State of Bombay. Respondent.

Herein the pleader for the appellant begs to submit as under:-

(1) The plaintiff-appellant had filed a suit to obtain an injunction against the defendant-respondent restraining it from interfering with his possession and enjoyment of the suit property by the plaintiff. The lower Court dismissed the suit. The appellant has preferred this appeal against the decree of the Lower Court.

(2) The defendant is likely to interfere with the possession and enjoyment of the suit property by the plaintiff by carrying out the order passed by Defendant No.31-8-1950. The appellant is likely to suceded in this appeal. If the defendant carries out its order on the strength of the decree of the lower Court, the appellant will be put to irrepairable loss.

(3) It is therefore, prayed that the Court be pleased to grant interim injunction restraining the defendant from interfering with the possession and enjoyment pending the decision of this appeal.

Bijapur. Sd.

Dated: Pleader for appellant.

Solemnly affirmed before me by Shri K.V.Ranjangi of Bijapur whom I personally know.

25-4-1953. Sd. L.B.Malagi.
Nazir.

ORDER.

Interim stay to issue as prayed for. Notice.

18/6/53. Sd. N.S.Shrikhande.
District Judge.

Suits,
Bijapur.
For permanent injunction, restraining the defendant from disturbing the plaintiff's possession of the suit property.

GOVERNMENT OF BOMBAY,
Legal Department
Resolution No. 19949/E
Bombay Castle, 4th October 1953.

Read Government Resolution, Legal Department, No. 2919, dated the 22nd February 1952.

Letter from the District Government Pleader, Bijapur, No.863 dated the 24th June 1953, stating that the suit noted in the margin was decided by the Civil Judge (Senior Division) Bijapur on the 1st April 1953, when the following order was passed:-

In the Court of the Civil Judge (Senior Division) Bijapur
Civil Suit No. 9 of 1951.
Nilappa Sangappa Shirur Lingayat - Plaintiff
Vs.
The State of Bombay - Defendant

"Plaintiff's suit is dismissed. The plaintiff do pay the cost of the defendant and bear his own".

Letter from the District Government Pleader, Bijapur No.863, dated the 24th June 1953, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

R. T. Katarki,
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

7C.25.9.53.

Submitted for signature
30/9
Sd/- N.B. 30/9/53
D.S. (Civil)

Fda vi S. Bcj: 2/53

Jh
3/10

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5-10

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37

1544—8,000—3-54—N*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮ್ನಾಮೆಯು (ಆರ್ಡರ ೪೧, ರೂ. ೨೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ಶಿಡ್ಯೂಲ ೧),

ಹುಕುಮನಾಮೆಯು

ಬಿಜಾಪುರ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜ ಕೋರ್ಟನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಬಿಜಾಪುರ ಇಲ್ಲಿ ನಿ॥

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೧೧೨ ಸನ್ ೧೯೫೩ ನೇ ಸೈಕಿ.

೧. ನೀಲಪ್ಪಾ ನಿಂಗಪ್ಪಾ ಕುಂಬಾರ ವಗ್ಗ. ೪೭ ವರ್ಷ ಬಿದ್ದಾರ. ಉಳ್ಳ ಬಿದ್ದಾರ. — ಅಪೀಲಿಂಟ (ಮೊದಲನೇ ಸಾಕಿ)

ವಿರುದ್ಧ

೧ ಶಿವಪ್ಪಾ ಬಿನ್ ಬಾಳಪ್ಪಾ ಕೆಲಸ ನಿಷ್ಠಾಂಬಟ್ಟೆ ಬಿಜಾಪುರ. ಇಲ್ಲಿಯ — ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಕೈಯಿ.

ನೇ ವರ್ಗ ಸಬ್-ಜಜ್ಜ ಕೋರ್ಟನ ಸನ್ ೧೯೫೧ ನೇ ಇಸವಿಯ ನಂಬರು ೬ ನೇದರಲ್ಲಿ ತಾರೀಖು ೧ ನೇ ಎಪ್ರೀಲ್ ತಿಂಗಳ ಸನ್ ೧೯೫೩ ನೇ ಇಸವಿಯ ಹುಕುಮು ನಾಮಿಂಕು ಮೇಲಿ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ನೀಲಪ್ಪಾ ನಿಂಗಪ್ಪಾ ಕುಂಬಾರ ಇವನು ೧-೪-೧೯೫೩ ತಾರೀಖಿನ ಹುಕುಮು ನಾಮಿಂಕು ಮೇಲೆ ಬಿಜಾಪುರ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ ಕೋರ್ಟಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಅಪೀಲು ಸನ್ ೧೯೫೩ ಡಿಸೆಂಬರ ತಿಂಗಳನ ೨೫ ತಾರೀಖಿನ ದಿವಸ ಶ್ರೀ S.S. ಮೊಲ್ಲಾ B.A. LL.B. ಇವರ ಮುಂದೆ, ಅಪೀಲಿಂಟನ ತರ್ಫನಿಂದ ಶ್ರೀ A.A. ಕೋಣಿ ವಕೀಲ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫನಿಂದ ಶ್ರೀ M.L. ಡಂಗಡಿ ಸರಕಾರಿ ವಕೀಲರವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದವ್ಹರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಕೆಳ ಕೋರ್ಟಿನ ತೀರ್ಪ ಮಾನ್ಯ ಮಾಡಲಾಗಿದೆ. ಅಪೀಲು ಖರ್ಚು ಕೊಡಿಸಲಿಲ್ಲ. ಮೊಂಟರ ಮಾಡಿದೆ. ವಿಶ್ವೇಶ್ವರಯ್ಯ. ಅವರು ಬಿಚಾರ. ಅವರು ತಿಳಿಸಿದ ಪ್ರಕಾರ. ಕಾಯ್ದಿದ ಮಿಟ್ಟಳಕಾಂಡ ಮಾಡಿಂಕು. ತಪ್ಪಿದ್ದಲ್ಲಿ ಎ ಪಕ್ಷದಿಂದಾಗಿ ಪ್ರೀತಿ ಮಾಡಿದಂತಾಯ್ತು. ಪ್ರಕರಣದಲ್ಲಿ ಮುಡಿಯಾರದಂತ್ಹ. ನಿರ್ಣಯ ತರ. ಆಗೋದಿ ಮುಡಿ ಮಾಡಿಂಕೂಂತ. ಪ್ರಾಂತವಾಯ್ತು ಎ ಮುಡಿಸ್ಕೆ.

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಅಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು : ಮತ್ತು ಮೂಲದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲಂಟ.	ರಕಮು.			ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು.		
	ರೂ.	ಆ.	ಪೈ.		ರೂ.	ಆ.	ಪೈ.
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು.	-	೧೦	-	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು.	-	-	-
೨ ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ ...	೨	೧೦	-	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ	-	-	-
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.	೫	-	-	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	೫	-	-	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	-	-	-
೫. ೫೫ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ ..	೧೮೦	೧೦	-	೫. ೫೫ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೮೦	೧೦	-
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ...	೧೮೦	೫	-	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ..	-	-	-
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ ...	೨೦	೫	-	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟ್ಯಾಂಪು	-	-	-
ಕಾಲಂಬಂದರ ಕೂದ ವಿವರ	೩	೨	-	೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	-	-	-
೧೦.೧೫.೧೫.೧೯೫೬ ಒಟ್ಟು	೪೨	೩	-	ಒಟ್ಟು ...	೧೮೦		-

ಈ ಹೊತ್ತು ತಾರೀಖು ೨೨ ತಿಂಗಳು ಡಿಸೆಂಬರ ಸನ್ ೧೯೫೫ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಅದೆ.

Sd/- ನಿಜಲಿಂಗಪ್ಪ
ಕಾರಕೂನ.

Sd/- ಎಸ್. ಕಂಬಾಗಿ
Sd/- ಎ. ಆರ್. ಹೆಲ್ಮೆಳ್ಳಿ
ಅಪೀಲೆಂಟ ವಕೀಲ.

Sd/- N.S. Hegde
31-10-55
ಜಜ್ಜ.
Sd/- H.C. Bongi

ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ ಅವರು ತಾವು ಹಾಜರ ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರ ವಾಗುವವು ಅಂದರೆ ಅವು ನಾಶಮಾಡುವದರಲ್ಲಿ ಬರುವವು].

7B
41

Recd.on 25-4-1953. Registered on 17-6-1953.
Decided on: 27-10-1955. Duration 2 years 4 months &10days.

In the District Court of Bijapur, at Bijapur.

Appeal No. 122 of 1953 from decree in Civil Suit No. 9 of 1951 of the Court of the Civil Judge,Sr.Dn. of Bijapur (Mr.M.H.Kazi).

Pleaders.

Mr.J.R.Dessai & V.H.Kambagi.

1. Nilappa Sangappa Shirur of Badami ...Appellant. (original-plff)

against.

The Dist.Govt. Pleader Mr.A.C.Angadi.

1. The Bombay State. Respondent. (original-debt).

Claim Rs 5/-.

Grounds of appeal.

(1) The decree of the lower Court is contrary to law and equity.

(2) The lower Court ought to have held that the plaintiff became the owner of the suit plot after he executed the agreement deed Ex.23 on 6-8-1949.

(3) The observations of the lower Court that plff ought to have approached the Government, before coming to the Court to get his grievances reddressed, are not correct.

(4) The lower Court erred in holding that when the order of the District Deputy Collector, dated 27-5-1950 was cancelled by defendant, the plff got no right over the suit property and that the agreement deed which came into existence in pursuance of District Deputy Collector's order also became a scrapt of paper.

(5) The lower Court ought to have held that the Mamlatdar who took the agreement deed Exh.23 was an agent of the defendant and that the said agreement was binding on the defendant.

(6) The lower Court erred in holding that the Government's order dated 31-8-1950 cancelling the Prant Officer's order under Section 211 of the Bombay Land Revenue Code is not ultra vires and void.

(7) The lower Court has failed to see tht the order of the Government cancelling the order of the District

Deputy Collector without giving any notice to the plff. is quite derogatory to the rules of natural justice and is in gross violation of the same.

(8) The lower Court has not properly applied the law enunciated in the rulings in 44 Bom.L.R. 405 and 46 Bom.L.R. 413, quoted by the plff.

(9) The lower Court erred in holding that the Govt. did not interfere with the agreement entered into by the plaintiff and the Mamlatdar.

(10) The reasoning of the lower Court is not proper.

(11) The ruling in 36 Bom.L.R. 242, does not apply to the facts of the case at all.

(12) The lower Court's observation that the Government had the right to cancell the District Deputy Collector's order under Sec.211 is wrong.

(13) The lower Court ought to have held that the order passed by the deft was nullity and ultravires as there was no notice to the plff before passing any order following the rulings in 49 Bom.L.R.414 and 52 Bom.L.R. 421.

(14) The reasoning of the lower Court in distinguishing the said rulings is wrong.

(15) The lower Court ought to have held that the defendant was estopped from disputing the plff's title to the suit site and house in view of the Mamlatdar's acceptance of the Kabulayat dated 6-8-1949 from the plaintiff.

(16) The lower Court erred in holding that the plff has not properly framed this suit.

(17) The lower Court erred in holding that the suit for injunction is not maintainable.

(18) The lower Court erred in holding that it was necessary for the plff to pray for a declaration that the Govt's order dated 31-8-1950 is ultravires and void and that the suit is bad for the omission to pay for the said declaration.

(19) In view of the ruling quoted in 55 Bom.L.R. 221, the decree of the lower Court is obviously wrong.

(20) The lower Court ought to have granted the injunction sought.

R.A.No. 122 of 1953.

JUDGMENT.

This is an appeal by the plaintiff from the Judgment and decree dated 1-3-1953 passed by the Civil Judge, Sr.Dn., Bijapur, in Civil suit No.9 of 1951.

2. The plff had brought the suit for a permanent injunction restraining the defendant Bombay State from interfering with his possession and enjoyment of the suit property, except for the breach of the terms of the agreement, if any, entered into by the parties, alleging that he was the owner of a house at Badami measuring 30' x 30'. The open site on which the house was constructed belonged to the defendant-Government. The Mamlatdar of Badami had leased it out to one Mallappa Girimallappa Jolad for one year by his order dated 28-2-1947. The leasee Mallappa was the nearest relative of the plff and was residing with him. The plff and Mallappa began to use the site as lessees as per the order of the Mamlatdar. The site was granted to the plff by the defendant under Section 67 of the Land Revenue Code read with rule 43 of the Land Revenue Rules. The terms and conditions agreed between the plff and the deft's officers were mentioned in Form H as required by Rule 43 of the Land Revenue Rules. The agreement was entered into by the Prant Officer or the District Deputy Collector as the agent of the deft. By virtue of the agreement dated 6-8-1949 entered into and embodied in form H according to Rule 43, the plff became the absolute owner of the suit site. Since the plff became the owner of the site, he constructed a pakka building at a cost of Rs 8000/-. He regularly paid the assessment as required by the agreement and he also paid Rs 50/- as the occupancy price asrequired by the agreement. He was in peaceful possession and enjoyment of the site togerher with the building thereon, but recently the defendant passed an order purporting to be under Section 211 of the Land Revenue Code cancelling the order of the Prant Officer or the District Deputy Collector and

directing the site and the building standing thereon to be auctioned with an upset price of Rs 5,080/- and an amount of Rs 3,050/- to be paid to the grantee, i.e., the plff out of the price realised at the auction. This order of the defendant was without jurisdiction and ultra vires. Section 211 of the L.R.Code no application to documents embodying the terms and conditions agreed between the Government and the plff. The Prant Officer or the District Deputy Collector acting as agent of the defendant had by his declaration and act intentionally caused and permitted the plff to believe that he was the owner of the suit site and to act upon such belief. The plaintiff honestly entered into the agreement with the defendant and passed a deed of agreement in form H and he constructed a pakka building at a considerable cost. It was therefore not open to the defendant to challenge the ownership or title of the plff to the suit property. Furthermore, the defendant had passed the order in question without notice to the plff and thereby resiled from the agreement entered into by its officers on its behalf. Such an order was illegal and unengorceable.By virtue of the illegal order passed by the defendant, the defendant's officers were threatening to disturb the plff's peaceful possession and enjoyment of the suit property and hence the suit.

3. The deft, through the District Government Pleader, Bijapur, contended by its written statement Ex. 17 that the defendant was the owner of the suit site. The Mamlatdar of Badami had passed an order on 22-2-1947 to lease out a space of 21' x 21' out of the suit site to one Mallappa Jolad for one year ending on 31-7-1947. Mallappa accordingly occupied this portion of the site. The Prant Officer, Bagalkot Division, Bagalkot, passed an order on 17/30-7-1949 to grant the site in suit to the plff on certain conditions. In exercise of the powers conferred by section 211 of the Land Revenue Code, the Government cancelled the Prant Officer's order and passed an order referred to in Para 5 of the plaint. This order was

77
45

legal and valid and not without jurisdiction and ultra vires. After the order of the Prant Officer and before its cancellation by Government, the plff passed a Kabulaya or an agreement dated 6-8-1949 in form H in the name of the Mamlatdar. That agreement was not entered into by the Mamlatdar as the agent of, or under instructions of, the defendant. The order passed by the Prant Officer was cancelled by Government and as a result of the cancellatic of the order, the Kabulayat or agreement became void. In the matters of revision, it was not legal and obligatory on the part of the Government to give notice to the partie or hear them. The cost incurred by the plff in constructing the building would not exceed Rs 3000/-. The order passed by the Government was legal just and equitable and Rs 3,050 were to be paid to the plaintiff in terms of the order. The plff had not prayed for any declaration and unless and until the Government order in question is declared ultra vires, the plff was not entitled to any injunction.

4. Upon the above pleadings, several issues were raised at Ex. 19 and the learned Judge below held that the Government's order dated 31-8-1950 cancelling the Prant Officer's order under Section 211 of the Land Revenue Code was not ultra vires or void, that the Mamlatdar acted as Government's agent and on its behalf and under its instructions in accepting the Kabulayat dated 6-8-1949 in form H from the plff, that the said Kabulayat was not binding on Government as the Prant Officer's order was not legal, that the plff was the owner of the house constructed on the suit site, that the deft was not estopped from disputing the plff's title to the suit site and house on account of the Mamlatdar's acceptance of the Kabulayat dated 6-8-1949 from the plff, that the Government's order dated 31-8-1950 could be questioned by the Civil Court, that it was necessary for the plff to pray for a declaration that the Govt's

order dated 31-8-1950 was ultra vires and void, that the suit was bad for omission to pray for the said declaration and that the plff was not entitled to the injunction sought, and eventually dismissed the suit.

5. It appears that an issue regarding the amount spent by the plff for building the house on the suit site was raised, but it was reserved without recording any finding thereon at the request of the parties.

6. Dissatisfied with the above result of the suit, the plff has come in appeal and the following points arise for determination on the arguments advanced before me by the learned pleaders appearing on either side.

(1) Whether the deft's order dated 18-9-1950 is ultra vires and without jurisdiction ?

(2) If so, whether it was necessary for the plff to pray for a declaration that the said order was ultra vires and illegal ?

(3) Whether the suit is bad on account of the absence of such a prayer ?

(4) Whether the defendant is estopped from disputing the plff's title to the suit site ?

My findings are:-

(1) Yes. (2) No. (3) No.

(4) Does not survive.

Reasons.

8. The property in dispute is an open site measuring 30' x 30' and a pukka building erected thereon. The house faces west and is by the side of the Tonga stand and the main road leading to Banashankari temple. There are shops on either side of the building. There are also shops in front beyond the open site and the road (vide inspection notes Ex.16 in this appeal).

9. There is no dispute that a portion of the suit open site measuring 21' x 21' was leased out to one Mallappa Jolad for one year ending on 31-7-1947 and he accordingly made wahiwat of it. Thereafter, on 3-11-1948, the plff made an

47

application for granting the suit site on the ground that he was holding it on temporary lease. The Mamlatdar, after inquiry, submitted his report to the District Deputy Collector recommending the grant to the plff as he was poor and had no house. The Mamlatdar further reported that the site applied for was near Khandak and n plots could be made and hence it could be granted to the plff on the occupancy price of Rs 25/- and N. plus A.A. of annas 9.The District Deputy Collector found that the panch valuation of Rs 25/- was low and therefore he raised it to Rs 50/- and passed an order granting the site to the plff on payment of the occupancy price of Rs 50/- and N.A.A. of annas 8 with the usual conditions and one more condition which was in these terms : "The land should not be sold or encumbered in any manner = whatsoever without prior approval of Government". The District Deputy Collector passed the above order on 30-7-1949 (vide certified copy of the order Ex.33). In terms of this order, the plff executed a Kabulayat Ex.23 in favour of the Mamlatdar of Badami on 6-8-1949 in form H. One of the conditions laid down in the Kabulayat Ex.23 was that within two years the plff should construct a permanent Pukka building on the site leased out to him, and he did construct such a building over the site within one year so. Thereafter, on 18-9-1950, the Government passed the following order: "In exercise of the powers conferred by Section 211, L.R.Code, Government is pleased to cancel Prant Officer's order, No.D.B.P. -1145, dated 30th July, 1949, and to direct that the land in question together with the building standing thereon should be auctioned with an upset price of Rs 5050 and that the grantee viz. Shri N.S.Shirur should be paid Rs 3050 out of the price realised at the auction. "Please take the necessary further action accordingly as soon as possible". This order of Govt. has been assailed by the plff's pleader on several grounds.

10. The learned Judge below has held that the plff is a permanent tenant of the suit site under the Kabulayat Ex.23 and that the pukka building erected thereon is of the ownership of the plff. This finding of his has not been challenged before me. On going through the terms and conditions of the Kabulayat Ex. 23, I am disposed to agree with him that it confers upon the plff the rights of a permanent tenant. I may mention here that it is not contended in the defendant's written statement Ex.17 nor is it contended before me by the District Government pleader that the District Deputy Collector's order dated 30-7-1949 granting the suit site to the plff on certain terms and conditions is illegal and improper. The regularity of the proceeding of the District Deputy Collector has also not been disputed before me. It is, however, urged upon me by the District Government Pleader that the Government order cancelling the District Deputy Collector's order is perfectly valid and legal, having regard to the provisions of section 211 of the Land Revenue Code. On the other hand, it is contended by the plff's pleader that the Government order goes far beyond the scope of section 211 and that therefore it is ultra vires, illegal and void. In my opinion, there is considerable force in this contention. If the order in question had merely cancelled the order of the District Deputy Collector, it would have been a perfectly legal and valid order, but it goes far beyond the scope of section 211 and therefore it is ultra vires, illegal and void. The order not only cancels the District Deputy Collector's order, dated 30-7-1949, but it also directs "that the land in question together with the building standing thereon should be auctioned with an upset price of Rs 5050/- and the grantee viz. Shri S.Shirur should be paid Rs 3050/- out of the price realised at the auction" It then directs the officers concerned to "take the necessary further action accordingly as soon as possible". When the building constructed on the suit site is admittedly of the ownership of the plff, the Government has no power to put it to auction after cancelling the District Deputy

Collector's order.The Government, at the most, can ask the plff to give back the vacant site which he took under the Kabulayat Ex.23. In that case, the plff can remove the structure or do something to remove it. But as the order stands, it gives no option to the plff butit directs the subordinate officers to put the building also to auction at once. Such an order cannot be held to be legal or valid. The District Government pleader, however, argues that the Government order cancelling the District Deputy Collector's order should be separated from the remaining part of the order which directs the building erected on the suit site to be sold and it should be held that it is valid and legal. This argument makes little appeal to my mind and it cannot be accepted. The order in question is a composite order and the earlier part cannot be separated from the latter part. In pursuance of this order, the subordinate officers tried to interfere with the possession and enjoyment of the building erected on the suit site by the plaintiff and therefore he was compelled to bring the suit. The order in question has to be considered as a whole and not piecemeal. Since it goes beyond the revisional jurisdiction of Government under section 211, it is ultra vires, illegal and void.

11. The plff's pleader further attempted to show that in view of the finding of the lower Court that the Mamlatdar acted as Government's agent on its behalf and under its instruction in accepting the Kabulayat Ex.23 dated 6-8-1949 in form H from the plff, the Government acted illegally in putting an end to the contract embodied in the Kabulayat (Ex.23) unilateraly. But in view of the Full Bench decision of our High Court in the State of Bombay v. Chhaganlal Gangaram Lawar (56 B.L.R. 1084), the plff's pleader's

contention in that behalf cannot be upheld. In that case, it has been held that a Kabulayat is nothing more than a part of the proceedings required by the Code for the grant of Government land to a person who applies for it; and if the order is set aise, the Kabulayat by itself confers no title upon the plff.The plff's title is based upon the order and not upon the Kabulayat, which is merely the formal embodiment of that order. Chagla C.J. who delivered the main Judgment of the Full Bench, observes at page 1096 :

"It is clear that the Kabulayat by itself does not give any better or higher right to the plff than the order itself. Therefore, in our opinion, if an order passed by the Collector or the District Deputy Collector under Section 62 can be revised by Government under section 211, the mere fact of a Kabulayat having been executed in pursuance of that order does not make the order any the less revisable under section 211, nor does the execution of the Kabulayat impose upon the Government any limitation with regard to its powers under that section" In that case, the question for decision before the Full Bench was : "Where a grant has been made under section 62 of the L.R.Code and Kabulayat has been taken in pursuance of the said grant under Rule 37 of the Land R. Rules, can the order making the grant and the Kabulayat be modified or cancelled under Section 211 of the Land Revenue Code"? This question was answered in the affirmative by the Full Bench. There is, therefore, no substance in the contention of the plff's pleader that the Kabulayat constitutes a contract and that therefore it could not be the subject of revision.

12. It is next dontended by the plff's pleader that the order in question violates the principle of natural justice inasmuch as no notice was given to the plaintiff before the order was passed. In this connection the decisions in Mohandas Mulji Sicks Vs. Collector of Bombay (49 B.L.R. 414), Tuljasa Janardhansa Pawar,

Hubli vs. The Commissioner of Income Tax, Bombay South (52 B.L.R. 421), and Dagadu v. The Labour Appellate Tribunal of India (56 B.L.R. 138) and the observations of Dicit J. in the State of Bombay V. Chhaganlal Gangaram Lavar (56 B.L.R. 1084) at pages 1100 and 1101) have been relied upon the plaintiff's pleader. In Mohandas va. The Collector of Bombay, it has been held :" Where a non-judicial body or person is saddled by the Legislature with quasi-judicial duties, it or he must, first of all, fellow the procedure, if any, which the Legislature has prescribed for it for him, and if and in so far as no such procedure is prescribed, it or he must act 'in accordance with natural justice; that is to say, it or he must hear the parties, or, at all events, the party against whom it or he is giving a decision fairly and must decide the matter itself or himself after due consideration. It must not, for example, give a decision which is the result of the arbitrament of chance". In Tuljansa v. The Commissioner of Income Tax, it has been held that when an authority upon whom judicial founctions are conferred has to decide or hear a case or an appeal, he can only do so provided he has heard all parties which are likely to be affected by the order which he is going to make. It is a fundamental principle or natural justice that no Judge or no person upon whom judicial powers are conferred can come to a judicial or a quasi judicial decision without hearing all parties who are to be affected by his decision. It is always to be assumed that the legislature who has knowledge of judicial principles and rules of natural justice impliedly, if not expressly, incorporate those rules whenever they confer judicial functions upon a person or an authority. In Dagadu v. The Labour Appellate Tribunal

of India, the same principle has been reiterated in these words : "No judicial tribunal should pass an order affecting a porson without giving notice to the person and without giving that person and opportunity to be heard.This principle is so deeply embedded in jurisprudence that it has come to be looked upon as a rule of natural justice. Unless a statute directs a tribunal to act contrary to the rules of natural justice or permits a tribunal to act contrary to the rules of natural justice, it must always be assumed that when a judicial tribunal is set up by a Legislature, the legislature intends and expects the tribunal to act in conformity with all these decisions it will appear that it is the fundamental principle of natural justice that a party who is likely to be affected should be heard before an order is passed. I do not think that the Government is immune from giving a hearing to the party who is likely tobe affected by its order under Section 211. It is true that section 211 of the Land Revenue Code dces not speak of any notice or hearing to be given to the party which is likely to be affected, but all the same the principle of natural justice demands that the party should be heard and then the order passed.

13. The observations of Dixit J. in the State of Bombay V. Chhaganlal, which are relied on by the plaintiff's pleader do not refer to the question of notice or to the principle of natural justice, but to the validity or otherwise of the order which is passed without assigning reasons. His Lordship observes : "It may, therefore, be conceded that the powers conferred by section 211 are very wide. The question still remains as to whether there are not any limits to the exiercise of the powers. In my opinion, there is indication in the Section to suggest that there is a limitation to the exercise of these powers, because "the revising authority has to satisfy itself as to the legality or propriety of any decision or order passed and as to the regularity of the proceeding of such officer.The section, therefore, means that, before the revising authority

53

under para 3 of section 211 modifies, annuls or reverses the order, the authority must be satisfied that the order is not a legal order, that the order is nbt a proper order, or that there has been some irregularity in the proceedings. It may be that the order made by a revenue officer may be an illegal order it may also be that the order made by a revenue officer may be an improper order; or it may well be that there may be an irregularity in the proceedings conducted by the revenue officer. But in each case the revising authority has got to be satisfied, and if before the order is modified, annulled or reversed the authority is to be satisfied as to one or the other of the limitations imposed by section 211, it seems to me that it is implicit in the section that the revising -- authority must state or indicate the grounds or the reasons as to why the authority is disposed to modify, annual or reverse the order.

"It may well be that in certain circumstances the order may be a capricious order. The order may be manifestly unreasonable. The order may,again, be a malafide order. While, therefore, the State Government has a very wide jurisdiction under section 211 either to modify, cancel or reverse an order, the State Govt powers are regulated by the language of para 1 of Sec. 211 and the State Government can do so only where the order is not a legal order or the order is not a proper order or there is some irregularity in the proceedings conducted by the revenue officer".

His Lordship then refers to the provisions of Section 62 and 211 of the Code and observes that there is no doubt that a higher revenue authority has power to modify, annual or reverse an order made under Section 62. His lordship next refers to the order under consideration and observes : "Now, the order which has been made by the Government on July 8, 1948, does not

so far as I see, indicate any reason or any ground as to why Government thought it fit to modify the order made by the District Deputy Collector which was set aside upon appeal and no reasons or indications are given in the order. Mr.Desai says that even if the Government has made the order without assigning any reasons, it is still a valid order. Now, when you have a section like section 211, which puts limitations upon the exercise of a power and the revising authority given no reasons as to why it thinks fit to modify the order, I should have thought that it isno valid order at all. But in this case the plff has not challenged the validity of the order. The plff's contention is that the State Government has no jurisdiction under Section 211 to modify the order; and, in my opinion, having regard to the language of section 211, although section 211 confers upon Government and the revising authority very wide powers, those powers are subject to the limitations contained in Para 1 of section 211".

From these observations of his Lordship it is clear that an order which is passed without assigning any reasons for modifying or cancelling the order of the Collector or the District Deputy Collector is not a valid order. I must mention here that in the present case, the plff has not only challenged the jurisdiction of the Government under Sec.211 to cancel the order but has also challenged its validity. I have reproduced above the Government order verbatim and it will be seen therefrom that no reasons are assigned for cancelling the order of the District Deputy Collector dated 30-7-1949. In view of the above observations of Dikit J, I should think that the Government order in question is not a valid order at all. Apparently, it is arbitrary, capricious and unreasonable and therefore the Court has power to examine the correctness of such an order. The Government order purports to cancel the order of the District Deputy Collector which is admittedly a valid order without assigning any reasons and without giving any notice to the plff to show cause why the District

53-67

Deputy Collector's order should not be cancelled under the bonafied belief that the Kabulayat Ex.23 conferred a valid title on him, the plff erected a pukka building at a considerable cost within the stipulated period. He pai the non-agricultural assessment since he came into possession of the suit site. But all of a sudden he was confronted with the Government order that not only the District Deputy Collector's order granting the site was cancelled, but also the pukka building which he had erected as per the terms of the Kabulayat (Ex.23) was to be auctioned. Such an order is manifestly arbitrary, capricious and unreasonable.

14. In the above Full Bench case, the appellant's pleader Mr.Thakurwanted to challenge the order of the Government on the ground th t it purported to set aside a valid order of the Collector and therefore it was arbitrary or capricious, although that allegation did not find a place in the plaint and the decision of the two Courts below proceeded only on the question of the jurisdiction of Government to make the order under Section 211.Their Lordships,however, observed that the Full Bench having been formed for the limited purpose of answering the question referred to it, it would be open to Mr.Thakur to persuade the Divisional Bench to which the mater was to go back, to allow him to raise that question. In other words the validity or the legality of the Government order was allowed to be agitated before th the Divisional Bench, although it was not raised in the plaint and in the lower Courts. In the present case, however, the validity and the legality of the order has been challenged in the plaint and also before me and therefore it will not be improper to record a finding on the same.

15. The District Government Pleader,however, contends that since this is not a suit for a declaration that the order of the Government is ultra vires

illegal and void, but only a suit to prevent disturbance of possession, it is not competent. Apparently, there is no substance in this contention. When the order in question is ultra vires, illegal and void, it does not require to be set aside.

16. Lastly, it is contended by the plff that the defendant is estopped from disputing his title to the suit property consisting of open site and building. Strictly speaking, the question of estoppel does not survive for consideration in this case in view of my finding that the order in question is ultra vires, illegal and void.

17. The result is that the appeal succeeds and must be allowed. Considering the peculiar circumstances obtaining in the case, it seems proper that the parties should be directed to bear their own costs.

Order.

18. The decree of the lower Court is reversed and the appeal is allowed. Parties to bear their own costs. There shall be a decree in favour of the plff for a permanent injunction restraining the defendant from interferin with the possession and enjoyment of the suit property by the plaintiff.

27th October 1955. Sd. M.S.Motrani.
District Judge.

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No. 1602 of 1955.
28-10-1955.

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57

To

The Collector of Bijapur.

Subject:- Bijapur Civil Appeal No. 122/1953

Sir.

The above appeal was allowed by the District Judge yesterday i.e. on 27-10-1955.

2. The final order of the District Court is as follows:-" The decree of the lower Court is reversed and the appeal is allowed. Parties to bear their costs There shall be a decree in favour of the plff for a permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property by the plaintiff".

3. The suit site which is at Badami was granted to the plff by an order of the Prant Officer on payment of the occupancy price of Rs 50/- and N.A. assessment of As. 8/- with some conditions. This was on 30-7-1949. The plff executed a Kabulayat on 6-8-1949 in Form H. One of the conditions laid down in the Kabulayat (Ex. 23) was that within 2 years the plff should construct a permanent pakka building on the site. The plff constructed a building on the site. On 18-9-1950 the Govt. passed the following order:- "In exericse of the powers conferred by Sec. 211 of the L.R.Code, Govt. is pleased to cancel the Prant Officer's Order No. LBP.1145 dated 30th July 1949 and to direct that the land in question together with the building standing thereon should be auctioned with an upset price of Rs 5050/- and that the grantee(the plff) should be ~~made~~ paid Rs 350/- out of the price realised at the auction'

In Full Bench decision of our High Court in the case of the State of Bombay vs. Changanlal (56 B.L.R. 1084) it has been laid down that when the grant has been made under Sec. 62 of the Land Revenue Code and ~~the~~

Kabulayat has been taken, ~~that~~ the order making the grant can be modified and cancelled under Sec. 211 of the L.R.Code. In view of this ruling, the order of the Govt. cancelling the order of the Prant Officer, is perfectly legal and valid.

But the learned District Judge held that the Govtix order in question is a composite order and the earlier part cannot be separated from the latter part. This finding of the Court appears to me to be erroneous.

4. The learned District Judge has further held that though Sec. 211 of the L.R.Code does not speak of any notice or hearing to be given to the parties ~~which is likely to have effected the payment~~ principle of natural justice demands that the parties should be heard and then the order passed. This finding of the Court also is Cannot be said to be correct.

5. The learned Dist.Judge holds that the order of the Govt is not a valid order on the ground that it is passed without assigning any reasons for cancelling the order of the Prant Officer. This finding also is erroneous.

6. It may be noted that the plff's suit was not a suit for a declaration that the order of the Govt. was ultravires, illegal and void. It was only a suit to prevent disturbance of possession.

The finding of the Dist.Court that the Govt.order is ultra vires and without jurisdiction in respect of the whole of the order is not correct.

The learned Dist.Judge ought to have held that it was for the plff to pray for a declaration that the said order was ultravires and illegal and that the plff's suit was bad in the absence of such a prayer.

7. I am thus of opinion that this is a fit case for preferring an appeal to the High Court.

To-day I have applied for certified copies of the Judgment and decree of both the Courts and I will forward them to you in due course.

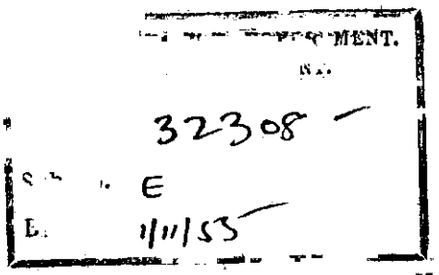
8. The period of limitation for filing an appeal

42
59

in the High Court would expire on 27-1-1956.

I,therefore, request you to move Government to prefer an appeal in the High Court.

As soon as I get uncertified copies of the Judgments, I will forward the same to you.



Yours faithfully,

Sd. A.C.Angadi.

Dist.Govt.Pleader,Bijapur.

No. 163 of 1955.
28-10-1955.

Copy forwarded with respects to the Remembrancer of Legal Affairs, Bombay, Sachivalaya.

Dist.Govt.Pleader,Bijapur.

1544—8,000—3-54—N*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮುನಾಮೆಯು
(ಅಡವರ ೪೧, ಕಾ. ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ರಠಿಷ್ಟ ೧೧, ಶಿದ್ಯೂಲ ೧),

ಹುಕುಮನಾಮೆಯು

ಚಿಕ್ಕಮಗಳೂರು ಇಲ್ಲಿಯ ಹಿರಿಯ ಜಿಲ್ಲಾ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಚಿಕ್ಕಮಗಳೂರು ಇಲ್ಲಿ ನಿ॥

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೧೧೨ ಸನ್ ೧೯೫೩ನೇ ಫೈಕಿ.

೧) ನೀಲಮ್ಮನವರ ಸಿಂಗಮ್ಮನವರ ಶಂಕರಪ್ಪ. ೪೭ ವರ್ಷ
ಬಲಿಜರು. ವ್ಯಾಪಾರ. ಆಲ್ದೂರು ಬಸ್ತಾಪುರ } ಅಪೀಲಿಂಟ (ಮೊದಲನೇ)

ವಿರುದ್ಧ

೧) ಪಿ. ಚಂದ್ರಯ್ಯಂಬಿನವರು ನೆಲ್ಲೂರು. } ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ)

ಚಿಕ್ಕಮಗಳೂರು ಹಿರಿಯ ಜಿಲ್ಲಾ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿಯ ೧ನೇ ವರ್ಗ ಸಬ್-ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೫೧ನೇ ಇಸವಿಯ ನಂಬರು ೬ನೇದರಲ್ಲಿ ತಾರೀಖು ೧೧ನೇ ಮಾರ್ಚಿಲ್ ತಿಂಗಳ ಸನ್ ೧೯೫೩ನೇ ಇಸವಿಯ ಹುಕುಮು ಸ್ಥಾವೊಂಕಂ ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ನೀಲಮ್ಮನವರ ಸಿಂಗಮ್ಮನವರ ಶಂಕರಪ್ಪ ಇವನು ೧೧-೪-೧೯೫೩ತಾರೀಖಿನ ಹುಕುಮು ಸ್ಥಾವೊಂಕಂ.ಮೇಲೆ ಚಿಕ್ಕಮಗಳೂರು ಇಲ್ಲಿಯ ಹಿರಿಯ ಜಿಲ್ಲಾ ಜಜ್ಜ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೫೩ ಡಿಸೆಂಬರ್ ತಿಂಗಳಿನ ೨೨ನೇ ತಾರೀಖಿನ ದಿವಸ ಶ್ರೀ N.S. ಮೆಲ್ಲಾಕಾಚಿ.ಬಿ.ಎ. ಸೀನಿಯರ್ ಮುಂದೆ, ಅಪೀಲಿಂಟನ ತರ್ಫಿನಿಂದ ಶ್ರೀ ನಿ.ಸಿ.ಕೆನ್ನಿಯಲ್.ಎ ಕಂಬಾಗಿ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಶ್ರೀ ಕೆ.ಎ.ಲಿಂಗಪ್ಪ. ನಿರಕ್ಷಿಸಿ ವಕೀಲರು. ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಕೆಳಕೋರ್ಟಿನ ತೀರ್ಪಂಮಾಂ ನಾವು ಆಕ್ಷೇಪಣೆ ಮಾಡಲಾಂ. ಮಾಡಲ್ಲ ಆದೇಶಾಂ. ಮಾಡಲಾಂ ಬಂಧಂ ಮಾಡಿಕೆ. ವಿಶ್ವಕೆಕೆಲ್ಲರಂ. ಆವಲ್ಲಿ ಮಚಿತಂಗ. ಆಗಾವ್ಯ ನಿಷಿ ನಿಬ್ಬಕ್ಕರಂ. ಪಾಲಾದ ಮಾಳಿಕಲ್ಲಿಂದಂ. ಆಗಿಂದು ಕಳಿಚ್ಚಿ ಎ ವಶಿಷ್ಟಾಲಿಕೆವ್ರ ಆಲಾಗಿಂದೂ ಕಾಕಕೆತ ಮಾಡಿಬ್ಬಾರದಂದು. ನಿರಂತರ ಆಗಲಿಕಿ ಮಾಡಿ ಬಾಧಿಂದೂ ಆಲೆ. ತೀರ್ಪಮಾಂ ನಾವು ಮಾಡಿದೆವೆ —

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಅಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು : ಮತ್ತು ಮೂಲದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲಂಟ.	ರಕಮು.			ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು.		
	ರೂ.	ಆ.	ಪೈ		ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು.	-	೧೦	-	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು.			
೨ ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ ...	೨	೧೦	-	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ. ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.	೫	-	-	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	೫	-	-	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ			
೫. ೫೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ ..	೧೮೦	-	-	೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ			
				೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ..			
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ...	೧೮೦	೫	-	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು ...			
೭. ಉಲಟಿ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ ...	೫೦	೫	-	೮. ಉಲಟಿ ಹರಕತಿಯ ಮೇಲೆ .... ವಕೀಲನ ಫೀ			
ನ್ಯಾಯಾಂಬಂಧ ಇದ ಖರ್ಚಿನ ೧೦.೧೪.೧೫೧೯.೨೦.	೩೦	೨	-				
	೪೭	೩೪	-				
ಒಟ್ಟು				ಒಟ್ಟು ...			

ಈ ಹೊತ್ತು ತಾರೀಖು ೨೭ ತಿಂಗಳು ಡಿಸೆಂಬರ ಸನ್ ೧೯೫೫ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಅದೆ.

Sd/- ಶೇಷಾಚಲ

ಕಾರಕೂನ.

Sd/- ಎ.ಹೆಚ್.ಕಂಬ್ಳಿ.

Sd/-ಎ.ಆರ್.ಕೆಸ್ತೂರ

ಅಪೀಲೆಂಟ ವಕೀಲ.

Sd/- N.S. ಹೆಬ್ಬಾರ

೨೧-೧೦-೫೫

ಪ್ರಾಜಜ್ಞ.

Sd/- ಹೆಚ್.ಎಲ್.ಜೋಷಿ

ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ ಅವರು ತಾವು ಹಾಜರ ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರ ವಾಗುವವು ಅಂದರೆ ಅವು ನಾಶಮಾಡುವದರಲ್ಲಿ ಬರುವವು].

15

No. 1602 of 1955
28-10-1955.

To

The Collector of Bijapur.

Sub:- Bijapur Civil Appeal No.122/1953.

Sir,

The appeal was allowed by the District Judge - yesterday i.e. on 27-10-1955.

2. The final order of the District Court is as follows: The decree of the lower Court is reversed and the appeal is allowed. Parties to bear their costs. There shall be a decree in favour of the plff for a permanent injunction restraining the defendant from interfering with the possession and - enjoyment of the suit property by the plaintiff.

3. The suit site which is at Badami was granted to the plff. by an order of the Prant Officer on payment of the occupancy price of Rs 50/- and N.A. assessment of As 8/- with some conditions. This was on 30-7-1949. The plff executed a Kabulayat on 6-8-1949 in Form H. One of the conditions laid down in the Kabulayat (Ex.23) was that within 2 years the plff should construct a permanent pakka building on the site. The plff constructed a building on the site. On 18-9-1950 the Govt. passed the following order: " In exercise of the powers conferred by Sec.211 of the L.R.Code, Govt. is pleased to cancel the Prant Officer's order No.LBP-1145 dated 30th July 1949 and to direct that the land in question together with the building standing thereon should be auctioned with an upset price of Rs 5050/- and that the grantee(the plff) should be paid Rs 3050/- out of the price realised at the auction."

In full Bench decision of our High Court in the case of the State of Bombay vs. Changanlal (56 B.L.R 1084) it has been laid down that when the grant has been made under Sec. 62 of the Land Revenue Code and Kabulayat has been taken, the order making the grant can be modified and cancelled under Sec.211 of the L.R.Code.

In view of this ruling, the order of the Govt. cancelling the order of the Prant Officer, is perfectly legal and valid.

But the learned District Judge held that the Government order in question is a composite order and the earlier part cannot be separated from the latter part. This finding of the Court appears to me to be erroneous.

4. The learned District Judge has further held that - though Sec.211 of the L.R.Code does not speak of any notice or hearing to be given to the parties which is likely to have effected the principle of natural justice demands that the - parties should be heard and then the order passed. This findings of the court also cannot be said to be correct.

5. The lea-rned District Judge holds that the order of the Govt. is not a valid order on the ground that it is passed without assigning any reasons for cancelling the order of the Prant Officer. This finding also is erroneous.

6. It may be noted that the plff's suit was not a suit for a declaration that the order of the Govt. was - ultravires, illegal and void. It was only a suit to prevent disturbance of possession.

The finding of the District Court that the - Govt. order is ultra vires and without jurisdiction in - respect of the whole of the order is not correct.

The learned District Judge ought to have held that it was for the plff to pray for a declaration that the said ord r was ultravires and illegal and that the Plff's suit was bad in the absence of such a prayer.

7. I am thus of opinion that this is a fit case for - preferring an appeal to the High Court.

To-day I have applied for certified copies of the Judgment and decree of both the Courts and I will forward them to you in due course.

8. The period of limitation for filing an appeal in the - High Court would expire on 27-1-1956.

I therefore, request you to move Government to prefer an appeal in the High Court.

As soon as I get uncertified copies of the Judgments, I will forward the same to you.

Yours faithfully,

Sd/ X X X
District Govt.Pleader,Bijapur.

19 Feb 69

Solr. (M.L.)

Bijapur Civil Appeal No.122 of 1953
from suit No.9 of 1951.

The above suit was brought for an injunction restraining Government from disturbing the plaintiff's possession and enjoyment of the suit site and the building erected by him thereon.

2. The suit relates to a site measuring 30' x 30' in the Gavthan of Badami. It was a non-agricultural land belonging to Government. The plaintiff applied for its lease to him agreeing to vacate the same whenever it might be required for a public purpose. The District Deputy Collector made an order dated 30-7-1949 that if the plaintiff paid Rs.50/-for occupancy price and a non-agricultural assessment of eight annas per year, the site might be granted to him on an inalienable tenure on condition that he erects a pakka building thereon within two years. The plaintiff agreed to these conditions, paid Rs.50/- for occupancy price, passed a kabulayat dated 6-8-1949 in favour of the Mamlatdar embodying the conditions of the grant and erected a building on the site.

3. The site was required for the purpose of a public motor stand. Government thought that the District Deputy Collector erred in granting it to the plaintiff. A panch valuation was made of the building erected by the plaintiff on the site. The panchas valued the house at Rs.3,000/-. If the grant made of the site to the plaintiff was to be set aside he was in equity entitled to get Rs.3000/- for value of the building and also Rs.50/- paid by him....

by him for occupancy price of the site. It seems that Government considered the site to be worth Rs.2,050/-. In exercise of its power of revision under section 211 of the Bombay Land Revenue Code, Government made an order dated 18-9-1950 cancelling the District Deputy Collector's order dated 30-7-1949 and directed that the site with the building erected by the plaintiff thereon should be sold by auction, with an upset price of Rs.5,050/-, and that out of the price realised at the sale Rs.3,050/- should be paid to the plaintiff. The plaintiff therefore brought the above suit challenging the Government's order as ultra vires and void.

slip Z
file no. SB210/219
put up

4. The suit was defended on the lines of the brief at slip A. The Civil Judge decided the suit in Government's favour and dismissed it. His judgment is at slip B. Against the Civil Judge's decision the plaintiff preferred the above said appeal to the District Court. The District Judge allowed the appeal and granted the plaintiff ~~an~~ the injunction sought by him against Government. The District Judge's judgment is at slip C.

5. It will be seen that the Government's order in question ~~was~~ falls into two parts:-

(1) cancelling the District Deputy Collector's order dated 30-7-1949, and

(2) directing the auction sale of the suit site with the building thereon with an upset price of Rs.5,050/- and payment of Rs.3,050/- to the plaintiff out of the price realised at the sale.

The District Judge was of the view that though the first part of Government's order cancelling the District Deputy Collector's order dated 30-7-1949 was legal, the second part thereof

directing...

directing sale of the suite and the building erected thereon by the plaintiff was illegal and ultra vires. He has observed that Government could have asked the plaintiff to remove the building and give it vacant possession of the site. However, he has held that the first part of the Government's order is not separable from its second part, and that therefore the whole order is ultra vires and void.

6. Before setting aside the District Deputy Collector's order dated 30-7-1949 Government did not give the plaintiff any hearing. Section 211 of the Bombay Land Revenue Code does not require any notice to be given to any party or hearing any party before exercising the powers of revision under it. The District Judge says that the principles of natural justice require that the plaintiff should have been heard before Government set aside the District Deputy Collector's order dated 30-7-1949. Government in its order setting aside the District Deputy Collector's order did not give any reasons for doing so. Relying on certain obiter dicta of Dixit J. in "State of Bombay vs. Chhaganlal" (56 Bom. L.R. 1084) the District Judge has held that Government should have given reasons for setting aside the District Deputy Collector's order, and that on account of the failure to do so Government's order is illegal and ultra vires. In that Full Bench case the High Court held that the Government's order was legal and valid. The District Judge erred in relying on Dixit J.'s obiter dicta in that case. He also erred in

holding...

holding that the first part of the Government's order cancelling the District Deputy Collector's order is not separable from the second part directing the sale of the site and the building thereon.

7. The District Government Pleader in his letter at slip K says that this is a fit case for preferring a second appeal against the District Judge's decision. I agree with him. A second appeal may be filed in the High Court against the District Judge's decision in this case. A copy of the District Government Pleader's letter may be sent to the Government Pleader, High Court for information.

8. Though it is necessary to file a second appeal in the High Court in this case, it may have to be conceded that the second part of the Government's order directing sale of the site and the building erected by the plaintiff thereon is not legal. Obviously the building erected by the plaintiff belongs to him. The site cannot be sold apart from the building erected on it. As stated above it seems that the site ~~with~~ without the building thereon is worth Rs.2,050/-. The plaintiff has already paid Government Rs.50/- for occupancy price of the site. Government in R.D. may, therefore, consider whether the dispute in this case may be settled by compromise by requiring the plaintiff to pay Rs.2,000/- more and granting him full occupancy rights in the site.

27-1

1A

V [illegible]
[illegible] SECRETARIAT, MADRAS
30 JAN 1956 [illegible]

1A

RMS.
27.1.

[illegible]
27-1

31/1

K.S. Secy R.D.

X. 2237/E
dt. 30/1/56

Immediate

No. 3563/E

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 14th February 1956.

To

The Collector of Bijapur,
Bijapur.

Subject:- Civil Appeal No.122/53 in Civil Suit No.9/51.
Nilappa Gangappa Ligayat
vs
The State of Bombay.

Sir,

Please refer to this office letter No.2116/E, dated the 28th January 1956 addressed to the Government Pleader, High Court, Bombay, copy endorsed to you and to the District Government Pleader, Bijapur.

I have the honour to state that though necessary orders regarding filing of a Second Appeal have been issued under the above mentioned letter, it may have to be conceded that the second part of the Government's order directing sale of the site and the building erected by the plaintiff thereon is not legal. Obviously the building erected by the plaintiff belongs to him. The site cannot be sold apart from the building erected on it. It seems that the site without the building thereon is worth Rs.2050/-. The plaintiff has already paid Government Rs.50/- for occupancy price of the site. Government in Revenue Department which was consulted whether the dispute in this case may be settled by requiring the plaintiff to pay Rs. 2000/- more and granting him full occupancy rights in the site, has agreed to the above proposals. You are, therefore, requested to negotiate the compromise with the plaintiff through the District Government Pleader, Bijapur. If he agrees to the above proposals, the District Government Pleader may be requested to draft the compromise and forward the same to this office for approval.

Yours faithfully,

for Remembrancer of Legal Affairs.P.T.O

Copy to -

The Revenue Department,

The District Government Pleader,
Bijapur.

BD/14.2

Copy sent to the G.P. High Court, Bombay

No. 477 of 1956.
Office of the D.G.P.Bijapur.
14-4-1956.

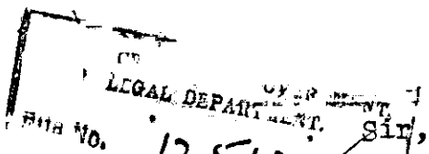
75
127

To

The Remembrancer of Legal Affairs,
Sachivalaya, Bombay.

Subject:-Bijapur Civil Appeal No. 122 of 1953
in Civil Suit No. 9/1951.

(1) Nilappa Sangappa Shirur.
vs.
(1) The State of Bombay



Sir,

With reference to your letter No. 8310/E of 11-4-1956 addressed to the Collector of Bijapur, copy of which you have sent to me, I have the honour to state that I have sent a reply to it to you under my No. 448 of 7-4-1956. I also forwarded a copy of it to the Collector of Bijapur under my No. 449 of 7-4-1956.

2. As stated in my above reply, I had requested the pleader for the appellant-plaintiff to arrange for a compromise. Shri J.R.Desai tried to secure the presence of his client namely the appellant-plaintiff. But his client failed to come to him. It may thus be seen that it has not become possible for me to arrange for the compromise suggested by you.

As stated by me in my reply, it may be considered as to whether you should instruct the Collector of Bijapur to carry on through the Mamlatdar of Badami negotiations for compromise with the appellant-plaintiff on the lines as were suggested to me by you.

Yours faithfully,
Ahurad
District Govt.Pleader,Bijapur.

L.D

Submitted.

A above may be done

16/4.

50 (64)

గ్రామ కరణం పదవులు. ఇనాం భూములు

నెల్లూరు సంస్థానం వివరణ నివేదనలు. నాను రాసినది

ఫలాలు. తారీఖు. 30-3-1956

పదవులు గ్రామములో. కరణం కరణం అంటారు. చిల్లర వస్తువులు

3'0 x 3'0 చొప్పు. భూమి నిర్ణీతంగా నివరం గా చదానాల్లో

రు భూమి 50/- రూపాయలు చొప్పున చిల్లర కొట్లు, నివ

రం భూమి చూసి కట్టి కొట్టి ఇచ్చి నంగి మంచి ఉపయోగం, కరణం

అలవు పరిశీలన, కరణం అలవు లంచం తీసుకోరాదు, చట్టం కొరకు

నివరంగా రాయలసీమ. చిన్న ఫలాలకు కట్టి కొంటే, నాను చూసి

మన్నించుకోవాలి. నివరం 1950 లో కట్టి కొంటారులో చూ

చూ కట్టి మాత్రం ఆదాయం అని. చూసి కొలుచు భూమి కొంటారు, నాని

చూసి కట్టి కొంటు ఇన్ని లాగా రాయమని నాను చిల్లర ఆదాయం రూపాయలు 50/-

కొట్టుకు, రకరకాలుగా. ఆదాయ కొట్టి కట్టి పదవులు చూసి లాభం కొంటారు

లాభ నివరం చూసి తెలుగు చేసి: పదవులు చూసి నరసింహులు. చిల్లర వ

రాలు కొట్టుకొని అయిన తర్వాత కొంచెం నివరంగా కొంటారులు ఇంకా ఆదాయం

చూపరు. నివరం నన్ను అడుగు అంటే చూసి, నాను చూసి కట్టి కొంటు

ఇన్ని భాగాలు చూసి ఆదాయం కొట్టి లు రూ 2000/- ఆగుతారు ఇంకా, మి

చ్చు ఆదాయం నరసింహులు తెలిపిన కొట్టు లాభం కొంటు ఇంకా, ఆదాయ

చెప్పరు. చూసి నరసింహులు నన్ను మిమ్ము తాతగారికి, నన్ను

చూసుకోమని, నన్ను కరణాలకి, నన్ను అయిన్ని చూసి

నరసింహులు లంచం తీసుకోరు. నాను కట్టి కొంటు ఇన్ని చూసి

చూసి కొట్టుకొని చంటి అయిన కొట్టి లు ఇంకా కొంటు కొట్టి లు

రూ, 2000/- ఇంకా చూసి నాను గట్టి కట్టి నాలు కట్టి

ఇచ్చి రాలు కొట్టి లు, రూ, 3000/- ఇంకా చూసి ఆదాయం

చూసి నరసింహులు తెలిపారు. చూసి నరసింహులు

రూపాయి చూసుకొని మాట్లాడి, నన్ను మిమ్ము తాతగారికి, చూసి

కొట్టుకొని కొట్టి లు ఇంకా. అయిన కొట్టి కొంటు ఇన్ని చూసి

నేలలో అన్ని ఇచ్చి, అలాగ చూసి కొట్టి లు ఇంకా, చూసి

నరసింహులు రూపాయి చూసుకోరాదు. నివరం రూ, 5050/- కట్టి, రూ, 3050/

నన్ను తీసుకొట్టి లు. ఇంకా 2000/- రూ చూసి నేలకొట్టి లు

పోయి. ఇంకా. రూపాయి కొట్టి లు. నివరం రూపాయి కట్టి లు

ఇల్లు ఇచ్చు, ఆదాయంతో తెలుగు అయిన కొట్టి లు. చూసి కొట్టి

కొట్టి చూసి. ఇంకా రూపాయి తీసుకొట్టి లు. ఇంకా. అ కొట్టి చూసి

నేలలాగ నివరంగా కొట్టి లు. ఇంకా. ఆదాయం కొట్టి లు

నివరం. చూసి కొట్టి లు. కట్టి లు. కట్టి అయిన కొట్టి లు. నివరం

రూపాయి కట్టి లు ఆదాయం కొట్టి లు ఇంకా తెలుగు కొట్టి లు.

అయిన నరసింహులు, నన్ను మిమ్ము లు 50/- రూపాయలు చూ

సి కొట్టి లు కట్టి లు. కొట్టి లు కొట్టి లు అయిన నివరంగా కొట్టి లు

లాగా చూసి కట్టి ఆదాయం అని, నివరం కొట్టి లు. చిల్లర

2000/- రూపాయలు తీసుకొట్టి లు కొట్టి లు ఇన్ని రూపాయలు కొట్టి లు

ಶಿಕ್ಷಣ, ನನ್ನಿಬ್ಬ ಅಣ್ಣ ತಂಗಿಯರು ತಂದೆಯ ಮೇಲಿನ ಪ್ರೀತಿಯಿಂದ ಸಂತೋಷವಾಗಿ ನಾವು ಬೆಳೆದಲ್ಲಿ ಮತ್ತು ಹುಡುಗಿಯರಿಗೆ ಮದುವೆ ಮಾಡಿದ ನಂತರ 2000/- ರೂಪಾಯಿ ಆ ಬಳಿಕ ಉಳಿದ ಹಣವನ್ನು ಸಮಾನವಾಗಿ ನಾವು ಮೂರು ಜನ ಹಂಚಿಕೊಂಡೆವು. ಆಗ ನಾನು ಚಿಕ್ಕವನಾಗಿದ್ದೆ, ಅಣ್ಣಂದಿರು ನನ್ನ ಜವಾಬ್ದಾರಿಯಂತೆ ಹೆಚ್ಚು ಬಾಧ್ಯತೆ ತೆಗೆದುಕೊಂಡಿದ್ದರು, ಅದರ ಪರಿಣಾಮವಾಗಿ ತಂದೆಯವರ ಕಾಲದ ಸಂಪತ್ತು 30/- ರೂಪಾಯಿ ಉಳಿಸಿಕೊಂಡು. ಸಂಪತ್ತನ್ನು ಸಮ. ಮಾಡಿ ನನ್ನ ಭಾಗವು ಎರಡಕ್ಕೆ ಬಂದಾಗ ಹಿರಿಯ ಭಾಗಗಳನ್ನು 45/- ರೂಪಾಯಿಗೆ ಕೊಡಬೇಕಾಯಿತು. ನಿಮಿತ್ತ ನಾನು ಚಿಕ್ಕವನು ಆದರೆ ಜಾಣ ಎಂದು ಎಲ್ಲರಿಗೂ ಅನ್ನಿಸಿತ್ತು, 1948-49 ರಲ್ಲಿ, ನಿಮಿತ್ತದವರು ಕೊಡಬೇಕಾದ ಮೊತ್ತವನ್ನು ಎಲ್ಲರೂ ಸೇರಿ ನನಗೆ ಕೊಟ್ಟರು. ಆಗ ಅದನ್ನು ನಿಮಿತ್ತಮಾತ್ರಕ್ಕೆ ಪಡೆದುಕೊಂಡು ಬೇರೆಯವರಿಗೆ ಕೊಡಬೇಕಾದ ಹಣವನ್ನು ಮತ್ತೆ ನನ್ನ ಕೈಯಿಂದ ಪಡೆದು ಅವರಿಗೆ ಕೊಟ್ಟೆ. ಮತ್ತು ಉಳಿದ ಹಣವನ್ನು ಬಡ್ಡಿಗೆ ಕೊಡಲಾಯಿತು. ಆಗ ಬಡ್ಡಿ ಹಣವು ಸಾಲದವರಿಂದ ಬರಬೇಕಾಗಿತ್ತು. ಅದು ಸಾಧಾರಣವಾಗಿ ನೂರಕ್ಕೆ ಒಂದಕ್ಕೆ ಒಂದು ರೂಪಾಯಿ ಬಡ್ಡಿ ಇತ್ತು. ಅದು ಸಾಲದವರಿಗೆ ಹೊರೆಯಾಗಿ ಕಾಣಿಸಿತು. ನಾನು ಅತಿಯಾಸೆಯವನಲ್ಲ, ಅಲ್ಲದೆಯೂ ಹುಟ್ಟುಗುಣವಿರಬೇಕು ಅಲ್ಲವೆ ಎಂದು ಹೇಳಿ ಅಲ್ಲಿಂದ, ನನಗೆ ನಿಮಿತ್ತಮಾತ್ರಕ್ಕೆ ಬಂದ ಹಣ ಬೇಡವೆಂದು ಹೇಳಿದಾಗ ಹಿರಿಯರು ಬಲವಂತ ಮಾಡಿ ಕೊಟ್ಟರು. ಆದರೆ ಸಾಲದವರಿಗೆ ಬಡ್ಡಿ ಬೇಡವೆಂದು ಹೇಳಿದೆ. ಸಾಲದವರು ಬಹಳ ಬಡವರಾಗಿದ್ದರು. ಅವರಿಗೆ ಬಡ್ಡಿ ಹೊರೆಯಾಗಿತ್ತು. ಅವರಲ್ಲಿ ಕೆಲವರು ಸಾಲ ಕೊಟ್ಟವರಿಗೆ ಬಡ್ಡಿ ಕೊಡಲಾಗದೆ ಅವರ ಮನೆಯ ಕೆಲಸಕ್ಕೆ ಬರುತ್ತಿದ್ದರು. ಹಾಗೆಯೆ ಅವರು ಕೂಲಿಗೆ ಬಂದಾಗ ಕೆಲಸ ಮಾಡಿಸಿಕೊಂಡು ಕೂಲಿ ಕೊಡಲಾಗುತ್ತಿತ್ತು. ಅವರಲ್ಲಿ ಅನೇಕರು ಇನ್ನೂ, ಜೀವಂತವಾಗಿದ್ದಾರೆ, ನನಗಾಗಿ ಅವರು ಸಂತೋಷಪಡುವರು. ನಿಮಿತ್ತವನ್ನು ಮುಂದೆ ಅಮ್ಮನಿಗೆ ಕೊಡಲು ಹೇಳಿದೆ. ಬಹಳ ಹೊತ್ತು ಕೊಡಲಿಲ್ಲ — ಆಗಲೆ ಬಂದೆ.

ನಾನು ಬಾಲ್ಯದಲ್ಲಿ ತಂದೆಯವರ ಪ್ರೀತಿಯನ್ನು ಅನುಭವಿಸಿದೆ. ಆದರೆ, 2000/- ರೂಪಾಯಿಯ ಸಂಪತ್ತನ್ನು ಕೊಡಬೇಕು ಎಂಬ ಕಾರಣಕ್ಕಾಗಿ ನನಗೆ ವಿದ್ಯೆಯಲ್ಲಿ ನಿಮಿತ್ತ ಪ್ರೋತ್ಸಾಹಿಸಿದ ಹಿರಿಯರು ಸಂಪತ್ತಿನ ಲೆಕ್ಕ ಮಾಡಿ 2000/- ರೂಪಾಯಿಯ ಸಂಪತ್ತನ್ನು ಕೊಡಲು 45/- ಇನ್ನೂ ಅವನ್ನು ಕೊಟ್ಟಿಲ್ಲ ಎಂದು ಹೇಳಿ ಬಡ್ಡಿ ಕೊಡಿಸಿದರು. ಆಗಲೆ ನಾನು ಅವರಿಗೆ ಕೊಡಬೇಕಾದ ಹಣವನ್ನು ಕೊಟ್ಟೆ. ಇಷ್ಟೆಲ್ಲ ಆದರೂ ನಾನು ಅವರ ಪ್ರೀತಿಯನ್ನು ಕಳೆದುಕೊಳ್ಳಲಿಲ್ಲ ಎಂಬುದು ನನಗೆ ಸಂತೋಷದ ವಿಷಯ.

ಇಂತಿ ನಿಮ್ಮ ವಿಶ್ವಾಸಿ

ಶಿವರಾಮ ಕಾರಂತ

Before me
B.R Deshpande
30-3-1956.

~~1/55~~ 2.D
29

Submitted with my this
office note at slip A
No action seems necessary.

File in S. Bijr 2/53.

28/4

Sol. (Mrs) Lee
28-4.

No. 14979/E
Office of the,
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 4th July 1956.

Subject: Civil Appeal No.122/53 in Civil Suit No.9/51.
Vs.
The State of Bombay.

MEMORANDUM:

With reference to the subject noted above, attention of the District Government Pleader, Bijapur is invited to this Office letter No.8310/E dated the 11th April 1956 addressed to the Collector, copy endorsed to him and he is requested to state as to how the matter stands at present.

for Remembrancer of Legal Affairs.

To
The District Government Pleader, Bijapur.

DVD/2.

Submitted for Sign

Govt reply. for D.R.P.

5/1

83

No. 863 of 1956
Office of D.G.P.Bijapur.
6th July 1956.

To

The Remembrancer of Legal Affairs,
Sachivalaya Bombay.

Sub: Civil Appeal No.122/53 of Bijapur District Court, in Bijapur ~~Civils~~ Civil Suit No.9/51

L.D.
- 9 JUL 1956
E

Sir,

With reference to your memorandum No.14979/E of 4-7-1956, Ihave the honour to state that I have sent my reply to you under my number No.477 of 14-4-1956.

The Collector of Bijapur also has forwarded to you a letter under his No. L.A.W.-204 of 16-4-1956.

2. As stated in my aforesaid reply to you, I had requested the pleader for the appellant to arrange for ~~compari~~ compromise. But his client has failed to come to him. Thus it has not become possible for me to arrange for the compromise as suggested by you.

THE SECRETARY TO GOVT. ...
LEGAL DEPARTMENT.
File No. 21164
Sub No. 617/56
Branch E

Yours faithfully,

A Murad

District Government Pleader,
Bijapur.

85

IMMEDIATE.

No. 16440/E
Office of the,
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 24th July 1956.

To

The Collector of Bijapur
Bijapur

Subject: Civil Appeal No.122/53 in Civil
in Civil Suit No.9/51.
Nilappa Sangappa Ligayat
Vs.
The State of Bombay.

Sir,

With reference to the subject noted above, I have the honour to invite your attention to this office letter No.3563/E, dated the 14th February 1956, and to request you to state how the matter stands at present.

Yours faithfully,

for Remembrancer of Legal Affairs,

Copy forwarded to the District Government Pleader,
Bijapur.

DVD/3.

87

No.LAW 204
Bijapur, 27-7-56.

To

The Remembrancer of Legal Affairs,
Bombay.

Sub:- Civil Appeal No.122/53 in Civil Suit No.9/51
Nilappa Sangappa Ligayat
Vs.
The State of Bombay.

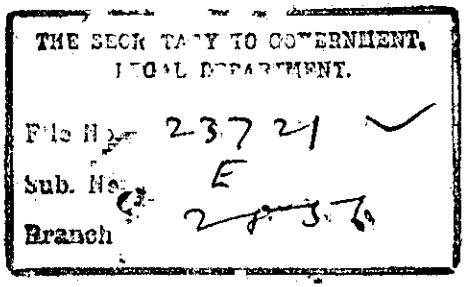
Ref:- R.L.A.Bombay's letter No. 16440/E of 24-7-56.

Sir,

It has already been reported under this office letter of even No. dated 16-4-56 (copy enclosed for perusal) that the plaintiff is not willing to pay Rs 2000/- more.

Yours faithfully,

for Collector, Bijapur.



89

No.LAW 204
Bijapur, 16-4-1956.

To

The Rememberancerx of Legal Affairs,
Bombay.

Sub:-Civil Appeal No.122/53
in Civil Suit No.9/51
Nilapa Sangapa Shirur of Badami --- Plff.
Ref:- Vs.
The State of Bombay Deft.

Ref:- Your letter No.3563/E of 14-2-56 and 11-4-56.

Sir,

The plaintiff Shri Nilapa Sangapa Shirur of Badami is not willing to pay Rs 2000/- more nor is he in a position to pay the same.His statement sent by the Mamlatdar Badami is enclosed for yourp perusal.

Yours faithfully,

Sd/ X X X
for Collector,Bijapur.

No. 998 of 1956. 91
Office of D.G.P.Bijapur.
Date:26th July 1956.

To

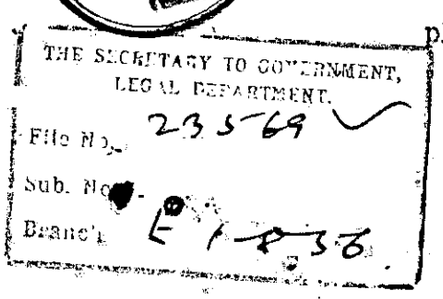
The Remembrancer of Legal Affairs,
Sachivalaya, Bombay.

Sub: Civil Appeal No.122/53 in Civil Suit No.9/51

1. Nilappa Sangappa... Plff.
Vs.
1. The State of Bombay. Deft.

Sir,

With reference to your No.16440/E addressed to the Collector of Bijapur copy of which you have sent to me, I have the honour to state , in continuation of my report No.448 of 7-4-1956, 477 of 14-4-1956 and my No. 863 of 6-7-1956 that as stated in my ~~remark~~ aforesaid reports to you, I had requested the pleader for appellant to arrange for compromise. But his client failed to come to him. Thus it has not become possible for me to arrange for the compromise as directed by you.



The Collector of Bijapur also has communicated to you by his No. LAW- 204 of 16-4-1956 that the plaintiff is not willing to pay Rs.2000/- more.

Yours faithfully,
sd. A.C.ANGADI
Dist.Govt.Pleader,Bijapur.

Through the Collector of Bijapur with respects.

No. 999 of 1956
Office of D.G.P.Bijapur.
Date:26th July 1956.

Advance copy forwarded with respects to the Remembrancer of Legal Affairs, Sachivalaya Bombay.

Angadi

Dist.Govt.Pleader,Bijapur

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Office of D.G.P.Bija
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Yours faithfully,

Dist.Govt.Pleader,Bijapur.

Through the Collector of Bijapur with respects.

No LAW 204
Bijapur 30-7-56
Forwarded by to the R.L.A Bombay in continuation of this office even no. dated 27-7-56
for Collr Bijv

LD

Submitted R.I.M. 19160 ✓ 23.4.67

~~Sir~~

In view of Collr's endorsement dated 20.4.67 on the above letter, R.D. Engineer may be informed that the ~~other~~ party is willing to make any compromise but there is no presumption is correct. /A

dl
7/6

Sd/ (M.V. Lee)
SE

Legal Department.

The R.D.is informed that the Plff.Respondent ~~surty~~ is not willing to make any compromise and that ~~their~~ presumption is correct.

Solicitor to Government.

U.R. to R.D.No. 18124/E dated the 13th August 1956.

DVD/10.8

96

Fälle in S Bez. 2/53

dk
14/6

JS cc